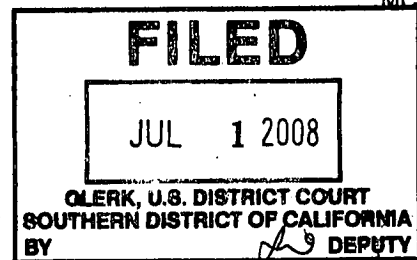


Name Brian T. Hill
 Address P.O. Box 5246
Corcoran, CA.
93212
 CDC or ID Number H67149



Federal Dist. Court
So. Dist. of Calif.
 (Court)

PETITION FOR WRIT OF HABEAS CORPUS

No. '08 CV 1180 JM (WMC)
 (To be supplied by the Clerk of the Court)

<u>Brian T. Hill</u> Petitioner	vs.	
<u>Larry E. Scribner</u> Respondent		

INSTRUCTIONS—READ CAREFULLY

- If you are challenging an order of commitment or a criminal conviction and are filing this petition in the Superior Court, you should file it in the county that made the order.
- If you are challenging the conditions of your confinement and are filing this petition in the Superior Court, you should file it in the county in which you are confined.
- Read the entire form *before* answering any questions.
- This petition must be clearly handwritten in ink or typed. You should exercise care to make sure all answers are correct. Because the petition includes a verification, the making of a statement that you know is false may result in a conviction for perjury.
- Answer all applicable questions in the proper spaces. If you need additional space, add an extra page and indicate that your answer is "continued on additional page."
- If you are filing this petition in the Superior Court, you need file only the original unless local rules require additional copies. Many courts require more copies.
- If you are filing this petition in the Court of Appeal, file the original and four copies of the petition and, if separately bound, one copy of any supporting documents.
- If you are filing this petition in the California Supreme Court, file the original and ten copies of the petition and, if separately bound, two copies of any supporting documents.
- Notify the Clerk of the Court in writing if you change your address after filing your petition.
- In most cases, the law requires service of a copy of the petition on the district attorney, city attorney, or city prosecutor. See Penal Code section 1475 and Government Code section 72193. You may serve the copy by mail.

2008 1903

FILING FEE PAID

Yes ☒ No ☐

PROMOTION FILED

Yes ☒ No ☐

COPIES SENT TO

Court ☒ Press ☐

Approved by the Judicial Council of California for use under rule 8.380 of the California Rules of Court [as amended effective January 1, 2007]. Subsequent amendments to rule 8.380 may change the number of copies to be furnished to the Supreme Court and Court of Appeal.

This petition concerns:

- ☐ A conviction
 ☐ Parole
☐ A sentence
 ☐ Credits
☐ Jail or prison conditions
 ☒ Prison discipline
☐ Other (specify): _____

1. Your name: Brian T. Hill
 2. Where are you incarcerated? CSP-CORCORAN II'S STATE
 3. Why are you in custody? ☒ Criminal Conviction ☐ Civil Commitment

Answer subdivisions a. through i. to the best of your ability.

- a. State reason for civil commitment or, if criminal conviction, state nature of offense and enhancements (for example, "robbery with use of a deadly weapon").

First Degree murder and First De
gree Attempted murder w/ use enhance-
ment

- b. Penal or other code sections: 187(2), 664/187(2)

- c. Name and location of sentencing or committing court: L.A. Superior court,
Eastern Division, Dept M

- d. Case number: BA050222

- e. Date convicted or committed: Jan. 1993

- f. Date sentenced: _____

- g. Length of sentence: 29 to life plus life w/ possibility of
parole

- h. When do you expect to be released? 2019+

- i. Were you represented by counsel in the trial court? ☒ Yes. ☐ No. If yes, state the attorney's name and address:

RAT G. Clark 4050 Buckingham Road
Los Angeles, CA 90008

4. What was the LAST plea you entered? (check one)

☒ Not guilty ☐ Guilty ☐ Nolo Contendere ☐ Other: _____

5. If you pleaded not guilty, what kind of trial did you have?

☒ Jury ☐ Judge without a jury ☐ Submitted on transcript ☐ Awaiting trial

ABUSE OF DISCRETION

In this matter, the state courts' (see Exhibits 13-15) and the U.S. Supreme Court (see Exhibit 16) was "Exceeded" there "Jurisdiction" by deliberately "Failing" to and blatantly "Refusing" to "Hold" Evidentiary Hearings, Issue Orders to Show Cause, Establish an Adequate Record for Review, etc... that warrants this court's intervention in Application with and compliance with clearly established state and Federal Laws. (see Grounds I-III of this writ.)

6. GROUNDS FOR RELIEF

Ground 1: State briefly the ground on which you base your claim for relief. For example, "the trial court imposed an illegal enhancement." (If you have additional grounds for relief, use a separate page for each ground. State ground 2 on page four. For additional grounds, make copies of page four and number the additional grounds in order.)

Denial of the right to present
documentary Evidence (C.D.C. 7219
Form written on an inmate martin
K65209)

a. Supporting facts:

Tell your story briefly without citing cases or law. If you are challenging the legality of your conviction, describe the facts upon which your conviction is based. If necessary, attach additional pages. CAUTION: You must state facts, not conclusions. For example, if you are claiming incompetence of counsel you must state facts specifically setting forth what your attorney did or failed to do and how that affected your trial. Failure to allege sufficient facts will result in the denial of your petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.) A rule of thumb to follow is: who did exactly what to violate your rights at what time (when) or place (where). (If available, attach declarations, relevant records, transcripts, or other documents supporting your claim.)

On February 16th, 2005 a Lieutenant
J. Jimenez (in and through out this
writ J. Jimenez) proceeded to hear
a C.D.C. rule violation report (RVR)
log # 01-05-A-043 in regards to the
Petitioner's alleged battery on an in-
mate with a weapon (a broom) charge
regarding an altercation with an in-
mate C.D.C. # K65209 on January 19th,
2005. (See Exhibit 1)

At this hearing the Petitioner
attempted to present a C.D.C. 7219 form

b. Supporting cases, rules, or other authority (optional):

(Briefly discuss, or list by name and citation, the cases or other authorities that you think are relevant to your claim. If necessary, attach an extra page.)

In the present matter at hand, it
must be noted that a "Habeas cor-
pus can be used to review the le-
gality of prison conditions." *IN RE*

continuing Ground 1 Facts: that medical personnel had written on inmate martin that demonstrated that this inmate had no bruises, scratches, scrapes, swellings, cuts, and or abrasions in his head or torso area (see Exhibit 2) demonstrating that inmate martin wasn't assaulted or battered as was alleged by the reporting employee, a T. Davis of this RVR. (see Exhibit 3)

No where in T. Jimenez's Fact Finding Report does he mention why the Petitioner was denied the right to present this document as evidence, whether or not this document was pertinent to the petitioner's defense, and or whether or not he assessed this documents credibility in order to assist him in his finding of guilt or innocence of the Petitioner (see pp. 3-4 of Exhibit 1) therefore blatantly denying the Petitioner his rights to present documentary evidence in his defense, a defense in general to these allegations, a fair and impartial hearing, due process, etc...

continuing Ground 1 facts: Also, nor was this denial of the right to present documentary evidence centered on and or based on institutional security or correctional goals reflecting J. Jimenez's clear abuse of such considerable discretion in this matter.

continuing Section B of Ground
 one supporting cases: Davis (1979)
 25 cal. 3d 384, 387 [158 cal. rpt. 384].
 It also must be noted that "there
 is no set time limit for filing a
 state petition for writ of Habeas
 corpus,"⁴ in re James (1952) 38
 cal. 2d 302. A Habeas corpus may be
 sought by one lawfully in custody
 for the purpose of vindicating rights
 to which he is entitled while in
 confinement. In re Ariz (1986) 42
 cal. 3d 667, 698, 230 cal. rpt. 505, 725
 p. 2d 664.

In WOLFF vs. McDONWELL (1974)
 418 U.S. 539 at 566, 41 L. Ed. 2d 935, 94
 S. Ct. 2963 the U.S. Supreme court
 wrote that "the inmate facing dis-
 ciplinary proceedings should be al-
 lowed to call witnesses and pre-
 sent documentary evidence in his
 defense when permitting him to do
 so will not be unduly hazardous

continuing Section 8 of Ground
1 Supporting cases: to institu-
tional safety or correctional goals!"
It further ruled that "Ordinarily,
the right to present evidence is
basic to a fair hearing". (See
also CLUTCHETTE VS. PROCURER (9th
Cir. 1974) 497 F.2d 809, 818; PACE VS.
OLIVER (5th Cir. 1981) 634 F.2d 302,
304-305; California Code of Regu-
lations, title 15, (Here on out C.
C.R. title 15) Section 3320(L);
Department of Operations Manual
(Here in on out D.O.M.) Section
52080.9

Therefore by the denial
of this basic right by J. Jimenez,
the demonstration of so by the
absence of any remarks in regards
to this documents probative value,
whether or not this document was
reviewed to assist him in
reaching this finding, the Pur-

continuing Section B of Ground
 1. Supporting cases: pose for
 the denial of this documents
 use, the absence of any remarks
 as to whether or not this docu-
 ment was Pertinent or not to
 the Petitioner's defense, etc...
 (See pp. 3-4 of Exhibit I)
 more than shows that this guilty
 finding must be reversed, a
 new hearing granted with all
 safe guards and or these al-
 legations dismissed in the interest
 of justice do unto the probabili-
 ty of the petitioner being af-
 ford a fair and impartial hear-
 ing.

As well, this fact finding
 report "lacks" an "Explanation" as
 to the denial of the right to
 Present this document as evidence,
 was centered on "Institutional

continuing Section B of Ground
 1 Supporting Cases: Security
 or "Correctional Goals". *PONTE VS.*
REAL (1985) 471 U.S. 491, 495, 85 LEd.
 2d 553, 105 S.Ct. 2192; See also
PACE VS. OLIVER (5th Cir. 1981) 634
 F.2d 302, 305; *SPELLMON-BEX VS.*
LYNAUGH (E.D. Tex. 1991) 778 F.Supp.
 338, 343; *SMITH VS. MASSACHUSETTS*
DEPT. OF CORRECTIONS (1st Cir. 1991)
 936 F.2d 1390, 1399

Such a denial is a blat-
 tant "Denial" of "due process" warrant-
 ing the relief the Petitioner so
 Prays for in this writ.

7 Ground 2 or Ground ~~8~~ (If applicable):

Denial of the right to call witnesses (C/O H. Gomez)

a. Supporting facts:

During the course of this RVR hearing as was held on February 16th, 2005 by J. Jimenez between 8 and 8:30 p.m. the Petitioner attempted to call correctional officers' (here in on out as C/O's) T. Rocha and H. Gomez as witnesses in order to get them to verify that the Petitioner had in fact informed them that he and inmate Martin wasn't getting along and that the Petitioner wanted a cell move in which J. Jimenez made C/O T. Rocha available by telephone.

After C/O T. Rocha denied that the Petitioner ever informed him (C/O T. Rocha) that he (the Petitioner) and inmate Martin wasn't getting along

b. Supporting cases, rules, or other authority:

As was indicated in the ruling of the U.S. Supreme Court in *WOLF V. McDONNELL* (1974) 418 U.S. 539, 566, 41 L. Ed. 2d 935, 94 S.Ct. 2963 "We are also of the opinion that the inmate facing

continuing Ground 2 Facts: (See Exhibit 4) J. Jimenez attempted to persuade the Petitioner to "sign" this "Fact Finding Report" waiving c/o H. Gomez as a witness because of the Administrations, c/o H. Gomez, and J. Jimenez systematically made this witness unavailable for this hearing as well as by telephone (See pp. 2 and 4 of Exhibit 1) therefore blatantly denying the Petitioner the right to call c/o H. Gomez as a witness and attempting to cover-up this fact by indicating that the Petitioner waived c/o H. Gomez as a witness even though this "Fact Finding Report" is "Not" signed by the Petitioner (See p. 2 of Exhibit 1) and on these questions and answers as posed by the Investigative Employee (here on out I.E.) N. Meida for the Petitioner "acknowledging" there "Alleged" exception as to c/o H. Gomez. (See pp. 2, 4, and 6 of Exhibit 1 and Exhibit 5)

Also, nor was the denial of

continuing Ground 2 Facts:

C/O H. Gomez predicted on the basis on "correctional Goals" and or "Institutional Security" not the "Life" or "Safety" of "Persons".

Since C/O H. Gomez was available for questioning (b) six days prior to this hearing (see date of questioning of C/O H. Gomez by I. E. N. maili as Exhibit 5 of this writ) and has been a correctional officer for 2 years and 6 months prior to this incident more than demonstrates that the denial of C/O H. Gomez as a witness was clearly an "Abuse" of "Discretion" for non-institutional Security, correctional Goals and or a life or Security of Person's need that warrants relief.

continuing Section B of Ground
 2 Supporting cases: disciplinary
 Proceedings should be allowed to
 call witnesses and present docu-
 mentary evidence in his defense
 when permitting him to do so will
 not be unduly hazardous to in-
 stitutional safety or correctional
 goals". This court further wrote
 in Part that "It may be that an
 individual threatened with serious
 sanctions would normally be en-
 titled to present witnesses and
 relevant documentary evidence; but
 here ~~we~~ must balance the in-
 mate's interest in avoiding loss of
 good time against the needs of the
 prison, and some amount of flexi-
 bility and accommodation is required."

This court further wrote
 that "prison officials must have the
 necessary discretion to keep the
 hearing within ~~limits~~ reasonable
 limits and to refuse to call wit-

continuing Section B of Ground 2 Supporting Cases: nesses that may create a risk of reprisal or undermine authority" and that "Although we do not prescribe it, it would be useful for the committee to state its reason for refusing to call a witness, whether it be for irrelevance, lack of necessity, or the hazards presented in individuals cases. (see also CLUTCHETTE vs. PROCTOR (9th cir. 1974) 497 F.2d 809, 818; PONTE vs. REAL (1985) 417 U.S. 491, 495, 85 L.Ed.2d 553, 105 S.Ct. 2192; RACE vs. OLIVER (5th cir. 1981) 634 F.2d 302, 304-305; SMITH vs. MASSACHUSETTS DEPT. OF CORRECTION (1st cir. 1991) 936 F.2d 1390, 1398; cal. Penal code Section 2932(c)(B) (3); C.C.R. Title 15, Section 3315(e); D.O.M. Section 52080.5.3.

In the findings regarding this disciplinary hearing, at p. 3

continuing Section B of Ground
 2 Supporting cases: of Exhibit I
 it's noted that all witnesses that
 were requested were granted even
 though the Petitioner "Refused" to
 "Sign" this C.B.C. 115A Form wai-
 ving c/o H. Gomez as a witness
 to this hearing (see p. 2 of Ex-
 hibit I) and by J. Jimenez
 stipulating the Petitioner's alleged
 verbal acceptance and documenting
 this to "cover-up" this "Denial"
 of the right to call witnesses
 (see p. 4 of Exhibit I) further
 demonstrates the denial of the right
 to call witnesses, a fair and im-
 partial hearing, due process, etc.
 because C.B.C. Title 15, Section 3315
 (e)(6) states that "Nothing in this
 Section ^{shall} preclude making a witness
 available by telephone for a dis-
 ciplinary hearing" and by J. Jim-
 enez deliberately "Failing" to and

continuing Section B of Ground 2 Supporting Facts: blatantly "Refused" to "Do" so even though c/o T. Rocha was made available by phone (see p. 3 of Exhibit I) further demonstrate the denial of c/o H. Gomez ~~as a~~ witness even though c/o H. Gomez was available (6) six days before this hearing to answer the questions that I posed through an I.E. (see p. 6 of Exhibit I) demonstrating that this guilty finding must be reversed, a rehearing ordered within all safeguards and rights and or this rule violation report dismissed in the interest of justice with prejudice based upon the probability of the denial of a fair and impartial hearing that is consistent with this court's order.

continuing Section B of Ground 2 supporting cases: Nor do this fact finding report as written by J. Jimenez reflect that ~~this~~ denial of C/O H. Gomez as a witness being based on the need for "Institutional Security" or "Correctional Goals" and or that his presence would "Jeopardize" the "Life" or "Safety" of persons that more than demonstrate a clear abuse of discretion by J. Jimenez that warrants the relief as sought.

Ground 3: Denial of right to present Documentary Evidence (the reporting employee T. Davis's personnel file)

Facts: On February 8th, 2005 a C/O N. Meida informed the petitioner that she was assigned as his Investigative Employee (I.E.) in regards to RVR log # 01-05-A-043 and sought a statement from the petitioner in which the petitioner declined to make a statement. After the petitioner made this decline the petitioner proceeded to submit questions to I.E. C/O N. Meida to pose to C/O's H. Gomez and T. Rocha who in turn the petitioner sought as witnesses for this RVR hearing. (See pp. 5-6 of Exhibit 1 and Exhibits 4 and 5)

The petitioner also instructed I.E. C/O N. Meida to investigate the reporting employee of this RVR C/O T. Davis (here in out as C/O T. Davis) to discover any and all information that the petitioner felt was perti-

continuing Ground 3 Facts: next to the Petitioner's defense as well as evidence that can be used to discredit C/O T. Davis as an alleged witness to this altercation (i.e., inmate and or staff complaints as was filed against C/O T. Davis for writing false RVR, filing false and fabricated reports, etc...) in which I. E. N. meida deliberately "refused" to and blatantly "Failed" to "perform" this act. (See pp. 5-6 of Exhibit 1 and Exhibits 4 and 5)

When J. Jimenez proceeded to hear this RVR on February 16th, 2005 the Petitioner informed J. Jimenez of I. E. N. meida's "failure" to "perform" this investigation on Petitioner's behalf in which J. Jimenez informed the Petitioner that such information cannot be disclosed to the Petitioner, that I. E. N. meida can't obtain this information and that such information is confidential in which is false and such a fabrication was

continuing Ground 3 Facts: used to deny the petitioner access to C/O T. Davis's personnel file therefore denying the petitioner the right to present documentary evidence in defense of these allegations as was reported by C/O T. Davis, (See p. 4 of Exhibit 1 and Exhibit 3) a defense in general, a fair and impartial hearing, due process, and not limited to.

Ground 3 Section B Supporting Cases: *IN WOLFF vs. McDONNELL* (1974) 418 U.S. 539, 566, 41 L. Ed. 2d 935, 94 S. Ct. 2963 the U.S. Supreme Court wrote that "we are also of the opinion that the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." This court further wrote that "Ordinarily, the right to present evidence is basic to a fair hearing" and that "It may be that an individual threatened with serious sanctions would normally be entitled to present witnesses and relevant documentary evidence; but here we must balance the inmate's interest in avoiding loss of good time against the needs of the prison, and some amount of flexibility and accommo-

Continuing Ground 3 Section B
 Supporting cases: action is required". (See also CLUTCHETTE VS. PROCUNIER (9th Cir. 1974) 497 F.2d 809, 818

the U.S. Supreme Court also wrote in PONTE VS. REA (1985) 471 U.S. 491, 495, 85 L. Ed. 2d 553, 105 S. Ct. 2192 that "thus the Prisoner's right to call witnesses and present evidence in disciplinary hearings could be denied if granting the request would be "unduly hazardous to institutional safety or correctional goals". " (See also PACE VS. OLIVER (5th Cir. 1981) 634 F.2d 302, 305; SPELLMAN-BEY VS. LYNAUGH (E.D. Tex. 1991) 778 F.Supp. 338, 343

the California code of regulations, Title 15, Section 3450 (2)

continuing Ground 3 B Support-
ing cases; reads: "Any person
on whom the department maintains
a record or file containing per-
sonal information has the right to
inspect their record or authorize
any person to inspect such records
on their behalf and to request
amendment to correct outdated, inaccur-
ate or incomplete information".

California Penal Code Section
832.7 (c) reads: "Notwithstanding sub-
division (a), a department or agency
which employs peace officers may
disseminate data regarding the number,
type, or disposition of complaints (sus-
tained, not sustained, exonerated, or
unfounded) made against its officers
if that information is in a form
which does not identify the individ-
uals involved."

But in this matter, the
STAFF that was assigned to con-

continuing Ground 3 B Support-
 ing cases: duct an investigation
 for J. Jimenez and gather info.
 for the petitioner blatantly
 "Failed" to and deliberately "Re-
 fused" to "Gather" this info.
 For the petitioner (see Exhibits
 4 and 5 of this writ) and J.
 Jimenez's response to this issue
 was that it was "confidential and
 irrelevant to this hearing" (see
 p. 4 of Exhibit I of this writ)
 in which is not only a blatant
 "Denial" of an adequate "Investiga-
 tion" but the right to present
 "Documented Evidence".

C.C.R. title 15, Section
 3315(d)(1)(2) entitles a prisoner to
 an Investigative Employee (I.E.)
 when a prisoner's housing status
 prevents him/her from being able
 to collect and present evidence

continuing Ground 3 B Support
 -ing cases: that's necessary for
 a defense. Section 3320(L) allows
 a prisoner to present document-
 ary evidence in his defense or
 mitigation of the charge. (see D.
 O.M. section 52080.9)

These denials was "Not"
 based on the need for "Institution-
 al Security" or "correctional Goals"
 nor would its admittance would
 have jeopardize the "Life" and or
 "Security" of "person's" demonstrating
 a blatant "Denial" of the "Right"
 to present documentary evidence
 warranting the reversal of this
 guilty finding, a rehearing of
 the allegations with all safeguards,
 and or the dismissal of these
 allegations with prejudice based
 upon the probability of the
 Petitioner not receiving a fair
 and impartial rehearing.

Ground 4: Denial of the right to a Fair and Impartial RVR Hearing

Facts: When J. Jimenez proceeded to hear this rule violation report log # 01-05-A-643 on February 16th, 2005 between the hours of 8 and 8:30 P.M. deliberately "Refusing" to "Allow" the petitioner to present a defense to these allegations, documentary evidence, (this 7219 Form and c/o T. Davis's Personnel file) to call witnesses, (c/o H. Gomez) exercising a predetermination of review as to the petitioner's guilt or innocence and demonstrating so by accepting this RVR as factual, relying on it and it alone to find the petitioner guilty of these allegations, denying the petitioner the right to testify in his own defense, due process, and not limited to J. Jimenez systematically denied the petitioner the right to a Fair and Impartial Hearing.

In regards to J. Jimenez's deliberate "Failure" to "Allow"

continuing Ground 4 Facts: the Petitioner to Present this 7219 Form that contained medical Personnel's examination of inmate martin and their findings, no where in J. Jimenez's Fact Finding report does he indicate that this document ~~that~~ ~~this document~~ does not have any Probative value to the Petitioner's defense and or any prejudicial effect to this hearing if admitted, does not demonstrate that inmate martin wasn't assaulted and or battered, doesn't substantiate the Petitioner's Position that inmate martin wasn't assaulted and or battered, can or can't be used to demonstrate the absence of bruises, cuts, abrasions, swellings, Fractures, and or lacerations, and can or can't be used for any other purpose. (See pp. 1-7 of Exhibit 1)

As was argued in Ground 1 of this writ and this Ground, such a document reflects the "Absence" of "Fractures", "cuts",

continuing Ground & Facts: "Swellings", "Abrasions", "Scratches", etc... and could have been used to demonstrate this fact by the petitioner, to show contradictions in this RVR, and not limited to and to be denied such a right and denied such a right without an explanation is a blatant "denial" of the Petitioner's "Rights" to Present documented evidence in the Petitioner's defense of these allegations, (see Exhibit 2) a fair and impartial hearing, due Process, and not limited to.

As to the denial of access to C/O T. Davis's Personnel File and the presentation of this documentation at this RVR hearing by J. Jimenez, such documentation as to prior allegations of filing false reports, rule violation reports, and all disciplinary action as administered to C/O T. Davis by his Superiors, and law enforcement agency as a result of civilian, inmate, and or other Staff complaints was extremely imperative to the Petitioner's defense as to

continuing Ground 4 Facts: the denial of this alleged battery with a weapon in order to demonstrate c/o T. Davis's propensity to file false reports, to write fabricated RVR's, to commit misconduct, and or participate in any other type's of unlawful acts while on duty and or off and to be ^{denied} such a right without a legitimate and lawful cause besides this information being confidential and allegedly not being relevant to this RVR hearing (see P. 4 of Exhibit 1) demonstrates not only the blatant "Denial" of the Petitioner's "Rights" to present documentary evidence, to a fair and impartial hearing by such a denial, by excepting c/o T. Davis RVR as factual and relying on it and it alone to find the petitioner guilty of these allegations, to due Process, and not limited to.

As to I. Jimenez's denial of the Petitioner's rights to a

Continuing Ground 4 Facts: Fair/ impartial hearing by failing to call C/o H. Gomez as a witness to this RVR hearing, make C/o H. Gomez available by telephone, and falsifying and fabricating the fact finding report in regards to the Petitioner's alleged waiver of C/o H. Gomez as a witness and the alleged acceptance of these questions and answers as was posed to C/o H. Gomez by I.E. N. Meide on the Petitioner's behalf, (see pp. 2 and 4 of Exhibit 1)

Such a right was critical and crucial to the Petitioner's defense in order to establish that the Petitioner did in fact inform C/o H. Gomez that the Petitioner and inmate Martin wasn't getting along and that the Petitioner sought a cell move through both C/o H. Gomez and C/o T. Rocha and even though both C/o's H. Gomez and T. Rocha "Fabricated" and submitted "False" responses to the "Questions" that

continuing Ground 4 facts: was posed on the petitioner's behalf by I. E. N. Medina (see Exhibits 4 and 5 and pp. 3 and 4 of Exhibit 1) made such a right to call c/o H. Gomez as a witness even more imperative and critical to the petitioner's defense and such a systematic denial was a blatant "Denial" of the petitioner's "Rights" to "call witnesses," to "present a defense," "Due Process," and not limited to amounting to the denial of the right to a fair and impartial RVR hearing.

As to the denial of the right to a fair and impartial hearing by J. Jimenez's acceptance of this RVR as factual and denying the petitioner the right to present this 7219 Form and c/o T. Davis's Personnel file as documented evidence, c/o H. Gomez as a witness, denied the petitioner the right to testify on his own behalf, the right to a defense, blatantly "Refused"

continuing Ground 4 Facts: to and deliberately "Failed" to "investigate" this incident before reaching a decision on this allegation and refusing to "stipulate" in this "Fact Finding Report" why these rights were denied except for the Petitioner's alleged acceptance of the answer's to the questions that was posed to C/o H. Gomez by I. E. N. Meida for the Petitioner, the Petitioner's alleged waiver of C/o H. Gomez as a witness, the alleged confidentiality of C/o T. Davis's personnel file and its alleged irrelevance, the Petitioner's alleged statement, and not guilty plea (See pp. 1-7 of Exhibit 1) more than demonstrate an illustration of J. Jimenez's pre-determination of the Petitioner's guilt that shows the blatant denial of the right to a fair and impartial hearing.

As argued in other issues

continuing Ground 4 Facts: of this writ and this issue, the right to present this 7219 Form was imperative to the petitioner's defense and demonstrated the absence of scratches, bruises, cuts, abrasions, fractures, etc... demonstrating that inmate martin wasn't assaulted with a weapon, the examination of C/O T. Davis's personnel file was also imperative to the petitioner's defense because of the possibility of it containing information that could have been utilized to discredit C/O T. Davis as the reporting employee of these allegations, the right to call C/O H. Gomez as a witness would have demonstrated that this official submitted false and fabricated answers to the petitioner's questions as to the petitioner informing C/O H. Gomez that the petitioner and inmate martin wasn't getting along and C/O H. Gomez's blatant failure

continuing Ground 4 facts: to attempt to defuse this situation, to allow the petitioner to testify on his own behalf in order to demonstrate these contradictions in this rule violation report, H. Gomez's 'Answers' to the petitioner's questions', the alleged acceptance of the answers' of C/O H. Gomez to these questions, his alleged waiver as a witness and the documentation of this testimony as well as why these allegations warranted investigating.

So by J. Jimenez blatantly "Failing" to and or just deliberately "Refusing" to "Allow" the petitioner to exercise such rights and by accepting this RVR as factual more than demonstrate a blatant denial of the right to a fair and impartial hearing.

As to J. Jimenez's denial of the right to a fair and impartial hearing by denying the

continuing Ground 4 Facts: Petitioner the right to testify on his own behalf, at the outset of this hearing the Petitioner attempted to explain to F. Jimenez that the Petitioner informed S/O's H. Gomez and T. Rocha that the Petitioner and inmate martin wasn't getting along and that the Petitioner wanted a cell move, (See Exhibits 4 and 5 and pp. 3-4 of exhibit 1) that inmate martin had no bruises, scratches, abrasions, fractures, swellings, etc. therefore inmate martin couldn't have been battered with a weapon, (See Exhibit 2) that the Petitioner doesn't have an extensive background that's littered with violence, hasn't been housed in a Security Housing Unit (SHU) for such acts, haven't been assigned to one in over eleven years of incarceration,

Continuing Ground 4 Facts: that the Petitioner did not stalk inmate Martin as alleged by C. T. Davis and J. Jimenez in these reports, that the Petitioner has mitigating factors in his favor that didn't warrant the imposition of a (15) month Sth term, the loss of 360 days credit, (28) points added to his classification score, and now as of August 5th, 2005 being forced to mail all personal property to a designated address in which none of these "issues" and or "testimony" has been "addressed" by J. Jimenez in this fact finding report and or listed in it. (see pp. 1-7 of Exhibit 1)

By such a demonstration should more than exemplify that the Petitioner was denied the right to testify and that J. Jimenez just chose to except the Petitioner's not guilty plea and

continuing Ground & Facts: alleged statement as the only testimony from the Petitioner and deliberate-ly disregarded the rest (see p. 3 of Exhibit 1) therefore blatant-ly "Dealing" the Petitioner the "right" to testify on his own behalf and relying on this RVR and it alone to find the Petitioner guilty for this allegation (see p. 4 of Exhibit 1) that more than shows that the Petitioner was denied the right to a fair and impartial RVR hearing.

As to the denial of the right to a fair and impartial hearing by way of J. Jimenez's blatant violation of the Petitioner's right to due process, when J. Jimenez heard this RVR on February 16th, 2005 the Petitioner wasn't given meaningful notice and or the opportunity to be heard in regards to the denial of the

continuing Ground 4 Facts: right to present a defense to these allegations, to present documentary evidence, the right to call witnesses, that J. Timenez was going to exercise a pre-determination of guilt as to the petitioner by accepting this RVR as factual and failing to investigate this issue, denying the petitioner the right to testify on his own behalf, that J. Timenez was going to fabricate this alleged waiver of 10 H. Gomez as a witness and the alleged acceptance of the questions and answers that was posed on behalf of the petitioner, that the denial of these rights wasn't going to be documented, and not limited to.

No where in this RVR (see Exhibit 3) and or this Fact Find-

continuing Ground 4 Facts : ing
Report (see pp. 1-7 of Exhibit 1)
does it give the petitioner mean-
ingful notice as to the blatant
denial of these rights and or stip-
ulate that the petitioner has been
heard by way of a defense and or
the exercise of any of these rights
and by J Jimenez deliberately
"Failing" to and blatantly "Refus-
ing" to "Give" the petitioner mean-
ingful notice and the opportunity
to be heard was a blatant denial
of the petitioner's right to due
process that warrants review.

Ground 4B Supporting cases:

As to the denial of a fair and impartial hearing by J. Timenez's denial of the petitioner's rights to present documentary evidence, such a right is constitutionally based and is required by the California's constitution Article I, Section 7 as well as the 14th Amendment of the United States constitution and to be denied such a right is a blatant violation when this denial is not ground on "Institutional Security" or "correctional Goals". *WOIFF V. McDOWELL* (1974) 418 U.S. 539, 566, 41 L. Ed. 2d 935, 94 S. Ct. 2963; See also *PONTE VS. REAL* (1985) 471 U.S. 491, 495, 85 L. Ed. 2d 553, 105 S. Ct. 2192; *SPELLMAN-BEY VS. LYNAUGH* (E.D. Tex. 1991) 778 F. Supp. 338, 343; *SMITH VS. MASSA-*

continuing Ground 4B Supporting cases: CHUSETTS DEPT. OF CORRECTIONS (1st cir. 1991) 936 F.2d 1390, 1401; PACE VS. OLIVER (5th cir. 1981) 634 F.2d 302, 305

the California code of regulations, Title 15, Section 3320(L) allows a Prisoner to present documents as evidence and in defence or mitigation of the circumstances as well as Department Operations Manual Section 52080.5.3.

IN SMITH VS. MASSACHUSETTS DEPT. OF CORRECTIONS, *Supra*, at p. 1401 this court wrote in part that "when an inmate seeks relevant and important documents central to the construction of a defense, and his request are repeatedly denied, an explanation of the reasons for the denial should be furnished. At some time, the reasons for the denial of such

continuing Ground 4B Supporting cases: a request must be made apparent."

the Calif. code of Reg., Title 15, Section 3450(2) allows any person to inspect a record / file that's maintained by the department either on this personnel's behalf or with their consent. Calif. Penal code Section 832.7(c) authorizes CCR to disseminate data regarding the number, type, or disposition of complaints (sustained, not sustained, exonerated or unfounded) made against its officers if this information is in a form that don't identify the individuals involved.

In this fact finding report of J. Jimenez that's listed as Exhibit I to this writ, this report does "Not" contain any "Explanation"

continuing Ground 4B Supporting cases: as to this denial of the use of this 7219 Form and the only explanation given to the denial of the use of information as to C/O T. Davis's personnel file, was that this information was confidential and irrelevant to this rule violation hearing (see pp. 1-7 of Exhibit I) even though C/O T. Davis is the reporting employee of this report (see p. 1 of Exhibit I and Exhibit III of this writ) and by such denials not being centered on "Institutional Security" and "Correctional Goals" as well as an explanation not being given as to the use of this 7219 Form demonstrates a blatant denial of the right to a fair and impartial hearing by these constitutional rights violations that warrants a reversal of this guilty finding, a rehearing with all safe-

Continuing Ground 4B Support-
 ing cases: Guards and or the
 dismissal of these allegations with
 prejudice based upon the proba-
 bility of the petitioner not being
 able to receive a fair and im-
 partial hearing, *ULENS VS. DANIELS*
 (7th cir. 1989) 871 F.2d 1328, 1335-1336;
MORAN VS. FARRIER (8th cir. 1991) 924
 F.2d 134, 137; *MEERS VS. MCBRIDE* (7th
 cir. 1996) 81 F.3d 717, 720; *DAVIS VS. AN-*
DREWS (Tex. Civ. App. 361 S.W.2d 419, 423;
HOWARD VS. WILKERSON (S.D. New York
 1991) 768 F.Supp. 1002, 1007; *PEOPLE VS.*
SUPERIOR COURT (Hamilton) (1990) 230 Cal.App.3d 1592

As to the denial of a fair
 and impartial hearing by the denial
 to call C/O H. Gomez as a witness,
 (see pp. 4 of 1 - 6 of 1 of Ground
 4 Supporting Facts) Such a right is
 governed by both the state consti-
 tution's Article I, section 7 and the
 Federal constitution's 14th Amendment
 and when such a denial is "Not"

continuing Ground 4B Supporting cases: centered on "Institutional Security" or "Correctional Goals" such a denial is a blatant abuse of discretion. *WOLFF VS. McDONWELL* (1974) 418 U.S. 539, 566, 41 L. Ed. 2d 935, 94 S. Ct. 2963; See also *PONTE VS. REAL* (1985) 471 U.S. 491, 497, 85 L. Ed. 2d 553, 105 S. Ct. 2192; *SPELLMON-BEY VS. LYWAUGH* (E.D. Tex. 1991) 778 F. Supp. 338, 343; *SMITH VS. MASSACHUSETTS DEPT. OF CORRECTIONS* (1st Cir. 1991) 936 F.2d 1390, 1401; *PACE VS. OLIVER* (5th Cir. 1981) 634 F.2d 302, 305; *CLUTCHETTE VS. PROCTOR* (9th Cir. 1974) 497 F.2d 809, 818

The Calif. Code of Reg., Title 15, Section 3315 (e) allows prisoner's facing disciplinary hearings the right to call witnesses, as well as Department Operations Manual, Section 52080.5.3, Calif. Penal Code, Section 2932 (e)(B)(3) and Calif. Code of Reg. Section 3315 (e)(6) allows a Senior hearing officer (J. Jimenez) to make

continuing Ground 4B Supporting cases: a witness available by telephone.

But in this case, J. Jimenez deliberately "refused" to, blatantly "failed" to make C/o H. Gomez "Available" as a witness in person and or by telephone and attempted to "cover-up" this "Malfeasance" by "fabricating" the petitioner's alleged "Waiver" of C/o H. Gomez as a witness, the alleged "Exception" of C/o H. Gomez's "Answers" to questions posed on behalf of the petitioner, and attempting to document this alleged waiver in this fact finding report listed as Exhibit I to this writ even though "None" of these "Documents" is signed by the petitioner waiving C/o H. Gomez as a witness to this hearing even though J. Jimenez attempted to document that the petitioner so stipulated (see pp. 2 and 4 of EX-

continuing Ground 4B Supporting cases: exhibit 2) that amounts to an abuse of discretion by this prison official that warrants the reversal of this guilty finding, a rehearing of these allegations with all safeguards and or the dismissal of these allegations with prejudice based upon the probability of the denial of a fair and impartial hearing. WOLFF VS. McDONNELL (1974) 418 U.S. 539, 566, 41 L.Ed.2d 935, 94 S.Ct. 2963; PONTÉ VS. ~~BEAVER~~ (1985) 471 U.S. 491, 497, 85 L.Ed.2d 553, 105 S.Ct. 2192; CLUTCHETTE VS. PROCTOR (9th Cir. 1974) 497 F.2d 809, 818

As to J. Jimenez's exceptionance of this rule violation report as factual, the denial of the rights to present documented evidence, to call witnesses, the petitioner to testify on his own behalf, to present a

continuing Ground 4~~2~~ Supporting cases: defense to these allegations, failed to investigate this incident before making a decision and failed to stipulate in this fact finding report why these rights were denied as argued in pp. 6 of 1 - 9 of 1 of Ground 4, facts, more than demonstrates that the petitioners rights to have all relevant evidence considered was violated, VIENS vs. DANIELS (7th cir. 1989) 871 F.2d 1328, 1335-1336 the right to have J. Jimenez base his decision on relevant evidence as well as reliable, WASH vs. FINN (S.D. New York 1994) 865 F.Supp. 126, 129-130 to not base this decision on an incomplete record, MORAN v. FARRER (8th cir. 1991) 924 F.2d 134, 137 the right to an explanation as to why majority of this evidence was disregarded by J. Jimenez that contradicted this rule violation report, MEEKS vs. MCBRIDE (7th cir. 1996) 81 F.3d 717, 720 the right to have

continuing Ground 48 Supporting cases: the whole charged offense circumstances considered in its entirety rather than isolated parts when proving intent as an element to substantiate that the petitioner broke a rule, DAVIS vs. ANDREWS (Tex. Civ. App.) 361 S.W.2d 419, 423 the right to not have hearsay testimony alone relied on without more to support a finding of guilt, HOWARD vs. WILKERSON (S.D. New York 1991) 768 F.Supp. 1002, 1007 and the right to have this guilty finding be based upon the preponderance of the evidence standard instead of just this rule violation report and it alone. ZIMMERLEE vs. KEENEY (9th Cir. 1987) 831 F.2d 183; ~~IN RE~~ Jackson (1987) 43 Cal.3d 501 [233 Cal.Rptr. 911]

As argued in pages 6 of 1-9 of 1 in Ground 4, Facts, "No" where in this fact finding report does J.

Continuing Ground 4B Supporting Cases: Jimenez States that this 7219 form does not have any probative value to the petitioner's defense, that its prejudicial to the outcome of this hearing, or that he considered it period before reaching his finding, as well as to why the petitioner was denied the right to testify, to present a defense, why he failed to even investigate before reaching a decision on these allegations or anything except for the petitioner's alleged waiver of c/o H. Gomez as a witness, the alleged acceptance of c/o H. Gomez's answers to questions that were on the petitioner's behalf, the alleged confidentiality of c/o T. Davis's personnel file and its alleged irrelevance to this even though c/o T. Davis is the reporting employee of this rule violation report in which "None" of these "Denials" were

continuing Ground 4B Supporting Cases: based on "institutional security" or "correctional Goals" therefore amounting to a deliberate "Abuse" of "discretion" that warrants the reversal of this guilty finding, a rehearing with all safeguards, and or the dismissal of these allegations with prejudice do unto the probability of the Petitioner not receiving a fair hearing.

As to the denial of a fair and impartial hearing by way of the denial of the right of the Petitioner to testify on his own behalf as argued on pages 9 of 12 of 1 of Ground 4, Facts, such a denial of this right and the denial of this right without an explanation and or this denial being based on "Institutional Security" or "correctional Goals" is a blatant "Abuse" of "discretion" that requires relief. Mack

continuing Ground to Supporting
 cases: vs. Johnson (E.D. Pa. 1977)
 430 F.Supp. 1139, 1145, Aff'd. 582 F.2d
 1275 (8th cir. 1978)

As argued in these pages of
 this ground, the Petitioner was "Not"
 given the "opportunity" to show that
 c/o's H. Gomez and T. Rocha had
 "Fabricated" their "Answers" to ques-
 tions that was posed on the Peti-
 tioner's behalf, that the Petitioner
 "Informed" both of these "c/o's" that
 him and inmate martin wasn't get-
 ting along and that the Petitioner
 wanted a cell move, that inmate
 martin had no bruises, scratches,
 scrapes, cuts, etc. . . on his person.
 So he couldn't have been assaulted
 with a weapon, that the Petitioner
 doesn't have an extensive background
 that's littered with violence, hasn't
 been housed in a Security Housing
 unit for such acts, haven't been
 assigned to one in over (11) eleven

continuing Ground 4B Supporting
 Cases: Years, that the Petitioner
 did "not" stalk "Inmate Martin" as
 was alleged by J. Jimenez and
 C/o T. Davis, that the Petitioner
 has mitigating factors in his favor
 that didn't warrant a (15) fifteen
 month (SHU) term, the loss of 360
 days credit, (28) points added to
 his classification score, and as of
 August 5th, 2008 being forced to
 send all personal property to a
 designated address in which "none"
 of these "Issues" are documented
 and or addressed and considered
 before reaching this finding show-
 ing the blatant denial of the
 right to a fair and impartial
 hearing by way of the right to
 testify (See pp. 9 of 1 - 12 of 1 of
 Ground 4 Facts and Exhibits as
 mentioned) for none "Institutional

continuing Ground 4B Supporting Cases; "Security" or "Correctional Goals" that warrants a reversal of this guilty finding, a rehearing with all safeguards and or the dismissal of these allegations with prejudice based upon the probability of the petitioner not receiving a fair hearing. CLUTCHETTE vs. PRO-
CURIER (9th cir. 1974) 497 F.2d 809, 818;
MACK vs. Johnson (E.D. Pa. 1977) 430 F. Supp. 1139, 1145, Aff'd. 582 F.2d 675 (8th cir. 1978)

As to the denial of a fair and impartial hearing by J. Jimenez's denial of the petitioner's right to due process as argued in pages 12 of 1-14 of 1 of Ground 4, Facts, such a denial of the right to due process for "non-institutional security" or "correctional goals" is a blatant "abuse" of "discretion" that requires a reversal of this guilty finding.

continuing Ground 4B Supporting cases: CLUTCHETTE VS. PROCTOR (9th cir. 1974) 497 F.2d 809, 818. This court has wrote in part that "Providing the accused inmate with specific notice of the charges against him. Adequate notice has been held by our circuit to be an indispensable ingredient of minimum due process in the prison context (Allen v. Nelson, Supra), and it has been unanimously viewed as a necessary safeguard in prison disciplinary proceedings. (See, e.g., McDonnell v. Wolff, Supra, 483 F.2d at 1062-1063; United States ex rel. Miller v. Twomey, Supra, 479 F.2d at 716, 718; corrections at 51.) The notice must inform the inmate of the charges against him and of the details of his alleged offense (Morrissey v. Brewer, Supra, 408 U.S. at 489); it must be promptly delivered to him and must be received sufficiently in advance of the hearing to enable him to prepare any defense.

Continuing Ground 4B Supporting cases: he may have. (McDonnell v. Wolff, Supra, at 1062; See In re Gault, Supra, 387 U.S. at 33.) Moreover, to permit presentation of an effective defense and to facilitate the therapeutic value of a fair and impartial disciplinary hearing, the prisoner should also receive a written explanation of the procedures that will be employed at the disciplinary hearing, the prisoner should also receive a written explanation of the procedures that will be employed at the disciplinary proceeding and a statement of his rights (and the limitations of those rights) under the hearing rules."

In this case, none of these procedures were employed except for notice of the actual allegations themselves and the time, date, the involved parties, and who

continuing Ground 4b Support-
 ing cases: the reporting employ-
 ee of these allegations was. the
 petitioner was "Never" informed
 that he was going to be denied
 the right to present a defense,
 documented evidence, to call wit-
 nesses, that T. Jimenez was
 going to exercise a pre-determin-
 ation of guilt by accepting this
 rule violation report as factual,
 by failing to investigate this is-
 sue, fabricate the petitioner's
 alleged waiver of c/o H. Gomez
 as a witness, the petitioner's al-
 leged acceptance of c/o H. Gomez's
 answer's that the petitioner posed,
 that the petitioner was going to
 be denied the right to testify
 in defense of these or these
 allegations, that the denial of
 these rights wasn't going to be
 documented, etc... (See pages 12 of 1
 - 14 of 1 of Ground 4, facts and

continuing Ground 4B Support-
ing cases: Exhibits cited) that
more than demonstrates that this
guilty finding must be reversed,
an order for a rehearing with all
safeguards issued and or these al-
legations dismissed with prejudice
in the interest of justice and
based upon the petitioner proba-
bility of the petitioner not re-
ceiving a fair hearing. CLUTCHET-
TE VS. PROCUNER (9th cir. 1974) 497
F.2d 809, 818; PEOPLE VS. Superior
court (Hamilton) (1991) 230 Cal. App. 3d
1592 [281 Cal. Rptr. 900]; California
code of Regulations, Title 15, Section
3320 (h)

Ground 5: Denial of the right to Appeal this Fact Finding Hearing

Facts: As to the denial of the right to appeal this guilty finding that is a blatant violation of the petitioner's rights to petition this administrative agency for redress as well as the courts, the petitioner first initiated this grievance log # CAL-A-05-0468 after this guilty finding for this PVA on March 16th, 2005 (see Exhibit 6) in which a correctional counselor II (CCI) D.W. Bell and a chief deputy warden (CDW) Tim Ochoa denied the petitioner any and all relief within their ability and authority to grant as state officials. (see Exhibit 7)

On June 7th, 2005 the petitioner filed this grievance with Joanne Woodford, director of corrections, in which was (15) fifteen working days beyond May 4th, 05 the date the petitioner received

Continuing Ground 5 Facts: this grievance back highlighting the Petitioner's inability to file this grievance within (15) fifteen working days of MAY 4th, 2005 (see section H of Exhibit 6) Seeking to be excused from such requirements per California code of Regulations, Title 15, Sub-Sections 3084.2(c), 3084.3(c)(6), and 3084.5(c) in which Joanne woodford, W. Grannis, chief, Inmate Appeals, and an underling of W. Grannis denied the petitioner any and all relief that was within their ability and authority as state officials. (See Exhibit 8)

After receiving this grievance back (64) days after its submission to the third level on June 7th, 2005 the petitioner re-submitted this grievance on August 14th, 2005 with another grievance seeking grievance log # CAL-A-05-0468's Processing (see Exhibit 9) in which Joanne woodford, director

continuing Ground 5 facts: of corrections, W. Grannis chief, Inmate Appeals and an underlying deliberately "refused" to "act" on either grievance, and or offer any assistance / relief that was within their ability and authority as State officials. (See Exhibit 10)

Such acts and actions are a blatant violation of the Petitioner's rights to Petition, this Administrative Agency for redress and the courts therefore amounting to a denial of the petitioner's rights to appeal this guilty finding that warrants relief.

As well, even if D.W. Bell's and Tim Ochoa's response to this grievance is examined, it will be noted that "No" investigation of this issue was "conducted" and that the "Response" at the Second

~~continuing~~ Ground 5 Facts: Level of Review by D.W. Bell and Tim Ochoa was "Falsified" and "Fabricated" because a Stho (Senior Hearing Officer) J. Ries did "Not" hear this "Rule Violation Report" as alleged by these "Prison Officials" (See P. 5 of Exhibit 7 that's labeled P. 4 of their response at the Second Level for this Grievance) but a "J. Jimenez" (See P. 1, 3, 4 and 7 of Exhibit 1 of this writ) and by these officials further alleged that the Petitioner "Excepted" c/o H. Gomez's "Questions" and "Answers" as was posed through the Petitioner's I.E. even though the Petitioner "argued" otherwise in this "Grievance" and J. Jimenez's reliance on this rule violation re-

continuing Ground 5 Facts: Port
 and it alone to substantiate this
 guilty finding (see pp. 5-6 of
 Exhibit 7 that's labeled as pp. 4
 and 5 of this response) further
 shows that a fair and impartial
 hearing was not granted, due process,
 the right to appeal this guilty find-
 ing and not limited warranting
 relief.

Ground 6 Supporting Facts: THE
MISCLASSIFICATION OF THE RULE VIOLATION AND THE ALLEGATIONS THAT
THE PETITIONER WAS ACTUALLY CHARGED WITH

On January 19th, 2005 when it was alleged that the Petitioner committed the act of a battery on an inmate with a weapon, the reporting employee of this Rule Violation Report, a T. Davis, did not insinuate that the Petitioner had committed an act of "Force or violence" in violation of Section "3005(c)" of the California code of Regulations, Title 15 but classified the Petitioner's alleged acts and actions as a violation of a "Failure" to "Obey orders" per California code of Regulations, Title 15, Section 3005(b) in which does "Not" coincide with the "Allegations" that the Petitioner is

Continuing Ground 6 Facts: charged with nor do this Section of the Rules and Regulations ~~that~~ Govern. In "Act" of "Force or Violence" further demonstrating that relief is warranted.

If Exhibit # of this writ is examined, it would be noted that the Petitioner's alleged rule violation in nature is the "commission" of an act of "Force or Violence" but according to the alleged "Rule violation" itself, the Petitioner was charged with an act of "Disobeying an order" in which is a violation of California code of regulations, Title 15, Section 3005(b) and not 3005(c) Force or Violence in which further demonstrates the denial of a fair and impartial hearing, due process the right to call witnesses, etc. transpired.

continuing Ground 6 Facts:

If the California code of regulations, title 15, Section 3323 (f) (6) is examined, this section does not support the imposition of the loss of 360 days of credit, a (15) fifteen month SHU (Security Housing Unit) term, and the addition of 20 points to an inmates classification Score Sheet but the loss of 61-90 days, 6 points, and no SHU term per California code of regulations, title 15, Sections 3323 (f) (6), 3341.5 (c) (9) (b), and 3375.4 (b) (1).

But if California code of regulations, title ⁵, Section 3005 (c) Force or Violence is examined, it would be acknowledged that this section would be the appropriate section to govern an act of a battery on an inmate with a weapon and that Section 3323 (b) (4) warrants

continuing ~~Ground~~ 6 Facts: the
 loss of 181-360 days for battery on
 an inmate with a weapon, that
 Section 3341.5(a)(4)(B)(2) governs
 the implementation of a (15) fifteen
 month SHU, and Sections 3375.4(b)
 (1) and (b)(5) warrants the addition
 of 28 points for a battery on an
 inmate with a weapon in which
 would have been the appropriate
 classification of the alleged rule
 violation that would govern this
 issue. and this rule violation "not"
 being "labeled" as such shows that
 relief is further warranted. (See
 the violated Rule Sections of the
 Rule violation reports as attached
 to this writ labeled as exhibits
 I and III.)

GROUND 6B SUPPORTING CASES :

In regards to the issue regarding the misclassification of this rule violation report by way of the alleged rule violation itself and the facts, if California code of regulations, Title 15, Section 3005(b) is examined, it would read: "Obeying Orders. Inmates and Parolees must promptly and courteously obey written and verbal orders and instructions from department staff and from employees of other agencies with authorized responsibility for the custody and supervision of inmates and parolees."

And if Section 3005(c) is read, it would state: "Force or violence. Inmates shall not willfully commit or assist another person in the commission of a violent injury to any person or persons, including self mutilation or

CONTINUING GROUND OR SUPPORT
-ING CASES:

attempted suicide, nor attempt or threat
- on the use of force or violence upon
another person. Inmates shall not will-
fully attempt to incite others, either
verbally or in writing, or by other deli-
berate action, to use force or violence
upon another person. "

if section 3315(2)(2)(A) is read
it would state that inmate misconduct
reported on a CDC Form 115 shall be
classified serious if: it involves any
one or more of the following circum-
stances: "use of force or violence
against another person".

if EXHIBITS I and III of
this writ are examined, it would be
noted that the "facts" of this "Rule
violation report" consist of the
alleged commission of an act of
force or violence but the actual
"Rule" that's alleged to have been

CONTINUING GROUND BY SUPPORT-ING CASES :

"violated" consist of being a violation of 3005(b) disobeying a direct order in which demonstrates that the petitioner wasn't given "Advance Written Notice" and "Adequate Notice" of the "claimed violation" that amounts to a Due Process violation that warrants the reversal of this guilty finding, the expunging of this issue from my "C" file, a rehearing with all safeguards and or the dismissal of this rule violation report with prejudice due unto the probability of the petitioner not being able to receive a fair and impartial hearing.

IN WOLFE VS. McDONNELL, 418 U.S. 539, 41 L.Ed. 2d 935 at 955, 94 S.Ct. 2963 Justice White wrote in part that if the minimum require-

CONTINUING Ground 6B SUPPORT ING CASES:

ments of procedural due process are to be satisfied that "written notice of the claimed violation" are to be issued. Justice White continued by writing in part that "Part of the function of notice is to give the charged party a chance to marshal the facts in his defense and to clarify what the charges are, in fact." See *In re Gault*, 387 U.S. 1, 33-34 and n. 54, 18 L. Ed. 2d 527, 87 S. Ct. 1428 (1967). (See also *SMITH VS. MASSACHUSETTS DEPT. OF CORRECTIONS* (1st Cir. 1991) 936 F.2d 1390, 1398; *SPELLMON-BEY VS. LYNAUGH* (E.D. Tex. 1991) 778 F.Supp. 338, 342; *CLUTCHETTE VS. PROCTOR* (9th Cir. 1974) 497 F.2d 809, 818.)

~~In~~ the present matter, such procedures were not followed and shows that the relief as sought in this writ is warranted.

GROUND 7: T. JIMENEZ'S
FAILURE TO CONSIDER MITI-
GUATING FACTORS IN THE PET
-ITIONER'S FAVOR

When the rule violation report was heard by T. Jimenez on February 16th, 2005 T. Jimenez deliberately "REFUSED" to and bla-
 -tantly "FAILED" to "CONSIDER" mitigating factors in the petitioner's favor such as the lack of a his-
 -tory of violent acts, the commis-
 -sion of assaults, assaults with wea-
 -pons, the fact that the petitioner has only been found guilty for
 one act of mutual combat (8) eight
 years prior to this incident, was
 disciplinary free for over (2) two
 years prior to this incident, etc.
 in which would have warranted
 the minimum amount of disciplinary
 action being issued upon the find-
 ing of guilt. (See Exhibit 11)

On February 16th, 2005
 when this rule violation report

CONTINUING GROUND 7 FACTS:

was heard by J. Jimenez, the petitioner attempted to point out these factors to J. Jimenez who began to get irate with the petitioner and stated that "this doesn't excuse the petitioner's behavior and doesn't justify his actions" in which when the petitioner continued to attempt to point out these factors J. Jimenez cut the petitioner off from conversating and proceeded to hear this report.

If Exhibit I of this writ is examined, it would be discovered that nowhere in this fact finding report does J. Jimenez mention that he considered any of the aforementioned factors before penalizing the petitioner therefore violating Departmental Policies and Institutional Procedures

CONTINUING GROUND 7 FACTS:

that warrants relief in this mat-
ter.

GROUND 7B SUPPORTING CASES:

If the California code of Regulations, Title 15, Section 3341.5 (c)(10) Factors in mitigation or ~~aggra~~ vation of STH term is examined, it would read: The STH term shall be set at the expected range unless a classification committee finds factors exist which warrant the imposition of a lesser or greater period of confinement. The total period of confinement assessed shall be no less than nor greater than the lowest or highest months listed for the offense in the STH term Assessment Chart. In setting the term, the committee shall determine the base offense. If the term being assessed includes multiple offenses, the offense which provides for the longest period of confinement shall be the base offense. Lesser offenses may be used to increase the period beyond expected term. After determining the base offense, the committee shall review

CONTINUING GROUND TB SUPPORT CASES:

the circumstances of the disciplinary offense and the inmate's institutional behavior history using the factors below. The committee shall then determine that either no unusual factors exist or find that specific aggravating or mitigating factors do exist and specify a greater or lesser term. The reasons for deviation from the expected term shall be documented on a CDC 128-G, Classification Chrono, and the term Assessment Worksheet, a copy of which shall be provided to the inmate.

California Code of Regulations, Title 15, Section 3341.5(c)(10) (A) Factors in Mitigation reads: 1. The inmate has a minor or no prior disciplinary history. 2. The inmate has not been involved in prior acts of the same or of a similar nature. 3. The misconduct was situational.

CONTINUING GROUND TB SUPPORT -ING CASES :

and Spontaneous as opposed to Plan-
-ned in nature. 4. the inmate
was influenced by others to commit
the offense. 5. The misconduct re-
sulted, in part, from the inmate's
fear for safety.

In this case, none of these
factors were considered by J.
Jimenez and/or the classifica-
tion committees that the peti-
tioner attended that demonstrates
a due process violation that war-
rants the reversal of this guilty
finding, the expungement of this
issue from my "c" file, the dis-
missal of this allegation with
prejudice and all other relief as
deemed fit.

GROUND 8: DENIAL OF THE PETITIONER'S RIGHTS NOT TO BE PLACED TWICE IN JEOPARDY

When J. Jimenez proceeded to hear this RVR and found the Petitioner guilty he proceeded to assess multiple punishments for the alleged violation of one rule in violation of the Petitioner's rights not to be placed twice in jeopardy for the same offense.

As to this guilty finding, this guilty finding was based on a violation of California Code of Regulations, Title 15, Section 3065(b) Disobeying orders and not 3065(c) Force or violence and without the consideration of aggravating or mitigating factors, the Petitioner was subjected to the disposition of a 15 month SHU term, the loss of 360 days good time / work time credits, 28 points

CONTINUING GROUND 8: added to my classification score and 10 days lost of yard. (see pp. 4 and 7 of Exhibit 1)

The Petitioner was also subjected to being criminally prosecuted for the alleged violation (see Exhibit 12) in which the Imperial County District Attorney's office subsequently reflected these allegations.

Such acts and actions are in violation of the Petitioner's constitutional rights not to be subjected to multiple punishments as guaranteed under the double jeopardy clauses of Article I, Section 15 of the California constitution and the 5th and 14th Amendments of the United States constitution that demonstrates that review is warranted in this matter.

SUPPORTING CASES GROUND

8: In *Pope v. Guillen* (1994) 25 Cal. App. 4th 756, 761, 31 Cal. Rptr 2d 653, Epstein, J., wrote that "the Fifth Amendment to the United States Constitution provides: 'No person shall ... be subject ... ed for the same offense to be twice put in jeopardy of life or limb ...' This guarantee is applicable to the States by virtue of the Fourteenth Amendment (*Benton v. Maryland* (1969) 395 U.S. 784, 794 [23 L. Ed. 2d 707, 795-716, 89 S.Ct. 2056 I.] and is afforded as well by the California Constitution, Article I, Section 15."

Epstein, J., further wrote that "the double jeopardy clause includes several protections: "It protects against a second prosecution for the same offense after acquittal. It protects against multiple punishments for the same offense." [citation]

CONTINUING SUPPORTING
 CASES GROUND 8: (Schiro v.
 Farley (1994 510 U.S. — [127
 L.Ed.2d 47, 56, 114 S.Ct. 783, 789].)

In this matter, the petitioner
 was not only subjected to multi-
 ple punishments for the same
 offense but criminal prosecution
 as well (see Supporting facts)
 in which should more than dem-
 onstrate that relief is warranted
 in this matter such as the re-
 versal of these findings, dismissal
 of this RVR with prejudice, re-
 moval of this RVR from the
 petitioner's "C" file, restoration
 of all lost credits, points, and
 A 1 A status and not limited
 to .

8. Did you appeal from the conviction, sentence, or commitment? ☒ Yes. ☐ No. If yes, give the following information:

a. Name of court ("Court of Appeal" or "Appellate Dept. of Superior Court"):

Court of Appeal, Second Appellate Dist., Div. Two

b. Result conviction affirmed c. Date of decision: _____

d. Case number or citation of opinion, if known: _____

e. Issues raised: (1) _____

(2) _____

(3) _____

f. Were you represented by counsel on appeal? ☒ Yes. ☐ No. If yes, state the attorney's name and address, if known:

David H. Goodwin P.O. Box 93579 L.A., CA 90093-0579

9. Did you seek review in the California Supreme Court? ☒ Yes ☐ No. If yes, give the following information:

a. Result Review Denied b. Date of decision: _____

c. Case number or citation of opinion, if known: _____

d. Issues raised: (1) _____

(2) _____

(3) _____

10. If your petition makes a claim regarding your conviction, sentence, or commitment that you or your attorney did not make on appeal, explain why the claim was not made on appeal:

N/A

11. Administrative Review:

a. If your petition concerns conditions of confinement or other claims for which there are administrative remedies, failure to exhaust administrative remedies may result in the denial of your petition, even if it is otherwise meritorious. (See *In re Muszalski* (1975) 52 Cal.App.3d 500 [125 Cal.Rptr. 286].) Explain what administrative review you sought or explain why you did not seek such review:

After receiving the final copy of this Fact Finding Report on March 4th, 2005 the petitioner elected to file a C.D.C. 602 Form (grievance) challenging this guilty finding (see Exhibit b) in which a. S.W. Bell and Chief Deputy warden Tim Ochoa in-terviewed the petitioner on April

b. Did you seek the highest level of administrative review available? ☒ Yes. ☐ No.

Attach documents that show you have exhausted your administrative remedies.

continuing Question 11: 26th 2005 and blatantly "Denied" the Petitioner any and all "Relief" that was in their ability and authority as State Officials to Grant on May 4th, 2005. (see Exhibit 7)

the Petitioner then elects to file this Grievance at the third and Final Level with Joanne Woodford, director of corrections on June 14th, 2005 explaining the reason why the Petitioner was prevented from filing this Grievance within (15) fifteen working days of May 4th 2005 (see section 11 of Exhibit 6) in which Joanne Woodford, M. Grannis, chief inmate appeals, and an underlying deliberately "Refused" to "Act" on this Grievance denying the Petitioner any and all Relief that was within their ability and authority as State Officials by returning this Grievance on August 11th, 2005. (see Exhibit 8)

the Petitioner then re-submits this Grievance to Joanne Woodford again on August 14th 2005 with another Grievance

continuing Question 11: (see Exhibit 9) highlighting her and her underlings deliberate "failure" to "Act" on Grievance, log# 2AL-A-05-0468 challenging this guilty finding in which, on October 25th, 2005, Joanne Woodford, N. Grannis and an underling deliberately "Refused" to "Process" either Grievance, therefore constituting exhaustion of the administrative remedies. (see Exhibit 10)

12. Other than direct appeal, have you filed any other petitions, applications, or motions with respect to this conviction, commitment, or issue in any court? ☒ Yes. If yes, continue with number 13. ☐ No. If no, skip to number 15.

13. a. (1) Name of court: Imperial county Superior court
 (2) Nature of proceeding (for example, "habeas corpus petition"): writ of Habeas cor
 (3) Issues raised: (a) Same as Grounds 1-8
 (b) _____
 (4) Result (Attach order or explain why unavailable): Petition Denied
 (5) Date of decision: February 15th, 2007
- b. (1) Name of court: court of Appeal Fourth Appellate Dist
 (2) Nature of proceeding: writ of Habeas Corpus
 (3) Issues raised: (a) Same as Grounds 1-8
 (b) _____
 (4) Result (Attach order or explain why unavailable): Petition Denied
 (5) Date of decision: June 14th, 2007

c. For additional prior petitions, applications, or motions, provide the same information on a separate page.

14. If any of the courts listed in number 13 held a hearing, state name of court, date of hearing, nature of hearing, and result:

NO Evidentiary Hearing, Order to Show Cause, etc... was Granted

15. Explain any delay in the discovery of the claimed grounds for relief and in raising the claims in this petition. (See *In re Swain* (1949) 34 Cal.2d 300, 304.)

there is NO substantial Delay Between Each Filings

16. Are you presently represented by counsel? ☐ Yes. ☒ No. If yes, state the attorney's name and address, if known:

17. Do you have any petition, appeal, or other matter pending in any court? ☒ Yes. ☐ No. If yes, explain:

civil litigation writ of Mandate/Prohibition

18. If this petition might lawfully have been made to a lower court, state the circumstances justifying an application to this court:

All courts Have Exceeded their Jurisdiction's, Ignored the Law and Facts, etc.

I, the undersigned, say: I am the petitioner in this action. I declare under penalty of perjury under the laws of the State of California that the foregoing allegations and statements are true and correct, except as to matters that are stated on my information and belief, and as to those matters, I believe them to be true.

Date: June 25th, 08

B. H.
 (SIGNATURE OF PETITIONER)

Continuing Question 13:

13. c. (1) Name of court: California Supreme court

(2) Nature of proceeding: writ of Habeas corpus

(3) Issues Raised: Same as Grounds 1-8

(4) Results: Petition Denied

(5) Date of Decision: November 4th, 2007

d. (1) Name of court: U.S. Supreme court

(2) Nature of proceedings: writ of certiorari

(3) Issues Raised: (a) what constitutes exhaustion of administrative remedies as mandated by 42 U.S.C. Sec. 1997e (2) and per Booth v. Churner (2001) 532 U.S. 731 [121 S.Ct. 1819; 149 L.Ed.2d 958]?

(b) If the Rules and Regulations of C.D.C.R. has removed a state created mechanism used by prisoners' Excusing them of the Failure to file Grievances within (15) fifteen working days and a Grievance is filed does this constitute exhaustion as interpreted by some Federal District courts

continuing Question 13.d.(3)
 (b): and Justice Alito in Wood-
 Ford v. NIS (2006) 126 S. Ct.
 2378, 165 L. Ed. 2d 368?

(c) Does this "One Line De-
 -nial" as issued by the California
 Supreme Court constitutes a
 "Ruling on the Merits" regarding
 "writs" filed challenging Prisoner
 Disciplinary Hearings in contrast
 to its own Rules of Court?

(d) Should a Guilty Finding
 be upheld as reached by a
 "Bias" Senior Hearing Officer
 and this Rule Violation Report
 being "Misclassified" in con-
 trary to Wolff v. McDonnell
 (1974) 418 U.S. 539 [94 S. Ct. 2963;
 41 L. Ed. 2d 935]?

PROOF OF SERVICE

I, Brian T. Hill, CERTIFY AND DECLARE THAT I AM OVER THE AGE OF (18) YEARS, A PARTY TO THE WITHIN ACTION AND A CITIZEN AND OR RESIDENT OF THE UNITED STATES.

I SERVED THE FOLLOWING DOCUMENT(S), writ of Habeas Corp. UPON THE PARTIES LISTED BELOW BY PLACING SEALED ENVELOPES IN THE UNITED STATES MAIL HERE AT Concord, CALIFORNIA AS FOLLOWS:

Gregory A. Ott
Attorney General
455 Golden Gate Ave.
Suite 11000
San Francisco, CA. 94102

Clerk's Office
U.S. District Court
So. District of Calif.
880 Front St.
Suite 4290
San Diego CA. 92101-8900

I, Brian T. Hill, SWEAR UNDER THE PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

EXECUTED AND DATED THIS 25th ~~28th~~ DAY OF June ~~30~~, 20 08

B. Hill
DECLARANT

Final copy of
C.D.C. 113

EX. 1

05 0468

REC'D CAL APPEALS

MAR 11 2005 45 132L

STATE OF CALIFORNIA

RULES VIOLATION REPORT

DEPARTMENT OF CORRECTIONS

CDC NUMBER H-67149	INMATE'S NAME HILL	RELEASE/BOARD/DATE LWOP	INST. CSP-CAL	HOUSING NO. A3-134L	LOG NO. 01-05-A-04
VIOLATED RULE NO(S). 3005 (b)		SPECIFIC ACTS BATTERY ON AN INMATE W/WEAPON	LOCATION A3-Floor	DATE 01/19/05	TIME 1716

On Wednesday, January 19, 2005, at approximately 1716 hours while performing my duties as A3-Control Booth Officer I observed Inmate HILL, H-67149 pick up a Broom from the lower tier and go up the stairs. HILL was going in the direction of "A" Section upper tier. Inmate HILL started striking Inmate MARTIN, K-65209 with the Broom Handle and striking him in the upper torso and head in front of cell 212. I ordered both inmates to get down but they did not comply I fired One (1) round from my 40mm Direct Impact Weapon, Serial #GS0902 and aimed at zone 1 at the assailant Inmate HILL. After I fired Inmate MARTIN pruned out in front of cell 212 and Inmate HILL ran towards the stairwell in front of cell 205. I instructed Inmate HILL to prone out on the tier. I continued to cover the area until both inmates were removed from the building. Later after reviewing the medical report I found out that Inmate MARTIN was struck in the lower leg but I aimed at Inmate HILL but struck MARTIN due to the wrestling on the tier. Inmate HILL is not a participant in the Mental Health Services Delivery System (MHSBS). Inmate HILL is aware of this report.

REPORTING EMPLOYEE (Typed Name and Signature) T. DAVIS, Correctional Officer		DATE 01/19/05	ASSIGNMENT A3-Control Booth	RDO'S Mon/Tue
REVIEWING SUPERVISOR'S SIGNATURE V. BACH, Correctional Sergeant		DATE 1/22/05	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING	
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input checked="" type="checkbox"/> SERIOUS	OFFENSE DIVISION: A-1	DATE 1/22/05	CLASSIFIED BY (Typed Name and Signature) G. RAPOZA, LT.	HEARING REFERRED TO <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC
COPIES GIVEN INMATE BEFORE HEARING				
<input checked="" type="checkbox"/> CDC 115	BY: (STAFF'S SIGNATURE) [Signature]	DATE 1/19/05	TIME 1930	TITLE OF SUPPLEMENT copy of 7214 medical report
<input checked="" type="checkbox"/> INCIDENT REPORT LOG NUMBER: 10-22-05	BY: (STAFF'S SIGNATURE) [Signature]	DATE 4/8/05	TIME [Blank]	BY: (STAFF'S SIGNATURE) [Signature]
HEARING				

CONTINUED ON RVR PART C

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

ACTION BY: (TYPED NAME)

J. JIMENEZ, CORRECTIONAL LIEUTENANT

REVIEWED BY: (SIGNATURE)

W. PRICE, FACILITY CAPTAIN☐ COPY OF CDC 115 GIVEN INMATE AFTER HEARING

CDC 115 (7/88)

SIGNATURE

DATE

TIME

CHIEF DISCIPLINARY OFFICER'S SIGNATURE

DATE

TIME

G. JANDA, ASSOCIATE WARDEN A/B

BY: (STAFF'S SIGNATURE)

DATE

TIME

I received on

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

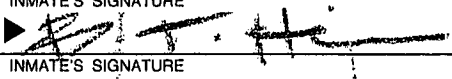
SERIOUS RULES VIOLATION REPORT

05 0468

CDC NUMBER H-67149	INMATE'S NAME HILL	INMATE'S RULE NO. 3005 (b)	DATE 01/19/05	INSTITUTION CSP-CAL	LOG NO. 01-05-A-043
-----------------------	-----------------------	-------------------------------	------------------	------------------------	------------------------

REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT ☒ YES ☐ NO

POSTPONEMENT OF DISCIPLINARY HEARING

<input checked="" type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE 	DATE 2/1/05
<input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE	DATE

DATE NOTICE OF OUTCOME RECEIVED

DISPOSITION

☐ I REVOKE my request for postponement.

INMATE'S SIGNATURE

DATE

STAFF ASSISTANT

<input type="checkbox"/> REQUESTED	<input type="checkbox"/> WAIVED BY INMATE	INMATE'S SIGNATURE	DATE
<input type="checkbox"/> ASSIGNED	DATE	NAME OF STAFF	
<input checked="" type="checkbox"/> NOT ASSIGNED	REASON DOES NOT MEET CRITERIA FOR CCR 33'S (1)(2)		

INVESTIGATIVE EMPLOYEE

<input type="checkbox"/> REQUESTED	<input type="checkbox"/> WAIVED BY INMATE	INMATE'S SIGNATURE	DATE
<input checked="" type="checkbox"/> ASSIGNED	DATE 2/1/05	NAME OF STAFF N METIA	
<input type="checkbox"/> NOT ASSIGNED	REASON		

EVIDENCE / INFORMATION REQUESTED BY INMATE: AT THE TIME OF HEARING, Inmate Hill stated he accepted the questions and answers from Officer Gomez who is documented in the I.E. Report. Officer Gomez WITNESSES is currently out on medical leave.

WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS)

☐ REPORTING EMPLOYEE ☐ STAFF ASSISTANT ☐ INVESTIGATIVE EMPLOYEE ☐ OTHER ☐ NONE

WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)

GRANTED

NOT GRANTED

WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)

GRANTED

NOT GRANTED

Off Gomez waived ☐ GRANTED ☐ NOT GRANTED

Off Rocha ☒ GRANTED ☐ NOT GRANTED

INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charged, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

SHO NOTE: Immediately after the SHO noted Inmate Hill's acceptance of the questions & answers from Officer Gomez, Inmate Hill stated he wasn't going to sign, noting his acknowledgment of his verbal acceptance. Correctional Officer Steele was present during his verbal acceptance and his refusal. The SHO decided to proceed with the hearing, the SHO was able to review Officer Gomez's answers in the I.E. Report.

INVESTIGATOR'S SIGNATURE

DATE

☒ COPY OF CDC 115-A GIVEN INMATE

BY: (STAFF'S SIGNATURE)

TIME

DATE

REC'D CAL APPEALS

05 0468

STATE OF CALIFORNIA

MAR 11 2005

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE 1 OF 2

CDC NUMBER H-67149	INMATE'S NAME HILL	LOG NUMBER 01-05-A-043	INSTITUTION CAL-CSP	TODAY'S DATE FEB-16-05
<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

On Wednesday, February 16, 2005, at approximately 2000 hours, Inmate HILL, H-67149, appeared before this Senior Hearing Officer (SHO) for adjudication of Rules Violation Report, CDC-115, Log Number 01-05-A-043. I introduced myself and explained Hearing Rules & Procedures to Inmate HILL, who stated he was in sound physical health. Inmate HILL is not a participant in the Mental Health Services Delivery System, the Disability Placement Program, or the Developmental Disability Program.

DUE PROCESS: Inmate HILL received all pertinent documents twenty four (24) hours prior to the hearing. All time constraints have been met. There are no due process errors.

STAFF ASSISTANT: A Staff Assistant was not assigned per CCR #3315(D)(2).

INVESTIGATIVE EMPLOYEE: Correctional Officer N. MEJIA was assigned on 01/19/05.

INMATES PLEA: The charges were read to Inmate HILL and he plead NOT GUILTY.

INMATE STATEMENT: Inmate HILL stated: "I told the officers that we had problems, and were not getting along."

WITNESSES: Witnesses were requested and granted. Inmate HILL requested Correctional Officer ROCHA as a witness and this request was granted by the SHO.

Correctional Officer ROCHA was asked the following questions from Inmate HILL via the SHO.

Q: On January 19, 2005, did I tell you that my cellie and I were not getting along and I needed a move?

A: No, they did request a bed move, they never said anything about not getting along.

Q: On January 19th, 2005, did I, Inmate HILL, H-67149, between the hours of 3 and 4 p.m., inform you, C/O T. ROCHA, that I needed to be released from my cell in order to retrieve my radio because me and Inmate MARTIN K-65209, were not getting along (non-compatible) so I can try to get a cell move?

A: No, I don't recall.

The SHO elected to ask the following questions of Correctional Officer ROCHA.

Q: Did you see inmate HILL and MARTIN square off prior to Inmate HILL striking him with the broom?

A: No, I was at the chow hall when this happened.

SIGNATURE OF WRITER J. JIMENEZ, CORRECTIONAL LIEUTENANT		DATE SIGNED 2 23 05	
<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	GIVEN BY: (Staff's Signature) [Signature]	DATE SIGNED 3/3/5	TIME SIGNED 1600

STATE OF CALIFORNIA

RULES VIOLATION REPORT - PART C

RECD CAL APPEALS

MAR 11 2005

A5-1324

DEPARTMENT OF CORRECTIONS

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CDC NUMBER	INMATE'S NAME	LOG NUMBER	INSTITUTION	TODAY'S DATE
H-67149	HILL	01-05-A-043	CAL-CSP	FEB-16-05
<input type="checkbox"/> SUPPLEMENTAL	<input checked="" type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input checked="" type="checkbox"/> HEARING <input type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

Correctional Officer GOMEZ was requested as a witness, however at the time of the hearing, Inmate HILL stated he accepted the questions and answers from Officer GOMEZ which is documented in the I.E. Report. Officer GOMEZ is currently out on medical leave. Immediately after the SHO noted Inmate HILL's acceptance of the questions and answers for Officer GOMEZ, Inmate HILL stated he wasn't going to sign, noting his acknowledgment of his verbal acceptance. Correctional Officer Steele was present during his verbal acceptance and his refusal. The SHO elected to proceed with the hearing, the SHO was able to review Officer GOMEZ's answers via the I.E. report.

During the I.E. Report, Inmate HILL submitted questions regarding the Reporting Employees employment conduct record. The SHO determined that this information was confidential and not relevant to this CDC-115 hearing.

FINDINGS: Inmate HILL was found GUILTY of having violated CCR# 3005 (b), for the Specific Act of "BATTERY ON AN INMATE WITH A WEAPON". This finding is based upon a preponderance of the evidence as submitted during the hearing, which is considered valid and substantiates the charge. The evidence includes:

A: The Reporting Employee's written report, which states in part: I observed Inmate HILL pick up a broom from the lower tier and go up the stairs. HILL was going in the direction of "A" Section upper tier. Inmate HILL started striking Inmate MARIN with the broom handle and striking him in the upper torso and head in front of cell 212.

B: The SHO reviewed all reports relevant to the CDC-115 hearing. The SHO is convinced that Inmate HILL willfully battered Inmate MARIN with the broom handle. The SHO determined that Inmate HILL utilized the broom as a weapon to cause serious harm to Inmate MARIN by striking him in the upper torso and head area.

DISPOSITION: Inmate HILL was assessed:

360 days FORFEITURE OF CREDIT, consistent with a Division "A1" Offense.
10 days LOSS OF YARD, Beginning 02/16/05 and Ending 02/26/05.

Inmate HILL was counseled, reprimanded and advised of future behavior expectations.

Inmate HILL is referred to Institutional Classification Committee (ICC) with the recommendation that the appropriate Security Housing Unit (SHU) term be assessed.

Inmate HILL is also referred to the Institutional Psychiatrist for evaluation prior to assessment of a SHU term, per the Madrid Decision.

Inmate HILL was advised of his rights to appeal the findings and/or disposition of the hearing, pursuant to CCR§, Section 30841.1 and also advised that he would receive a completed copy upon final audit by the Chief Disciplinary Officer (CDO). The review and signature of the CDO affirms, reverses, or modifies the disciplinary action and/or Credit Forfeiture and constitutes the First Level for Appeal.

<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER		DATE SIGNED
	J. JIMENEZ, CORRECTIONAL LIEUTENANT		2/23/05
	GIVEN BY: (Staff's Signature)	DATE SIGNED	TIME SIGNED
	[Signature]	3/3/5	1600

REC'D CAL APPEALS

05 0468

STATE OF CALIFORNIA

MAR 11 2005

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE ____ OF ____

CDC NUMBER H-67149	INMATE'S NAME HILL	LOG NUMBER 01-05-A-043	INSTITUTION CSP-CAL	TODAY'S DATE 02/08/05
<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input type="checkbox"/> HEARING <input checked="" type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER: _____			

On Tuesday, February 08, 2005, I informed Inmate HILL, H-67149, A3-132L, that I had been assigned as the Investigative Employee for Rules Violation Report, Log #01-05-A-043 charging him with violation of CCR #3005 (b). I explained to Inmate HILL that my function was to: collect information, interview him, the Reporting Employee and all witnesses having information about the incident. Inmate HILL stated that he understood my function and expressed no objections to my assignment. Therefore, as the assigned and accepted Investigator, I conducted the investigation and submit the findings in this report.

← CHARGED INMATE STATEMENT: On Saturday, February 08, 2005, at approximately 1935 hours, I interviewed Inmate HILL who the following:

STATEMENT: " I have no statement."

On Tuesday, February 08, 2005, at approximately 1950 hours I interviewed Correctional Officer T. DAVIS, who stated the following:

STATEMENT: " On Wednesday, January 19, 2005, at approximately 1716 hours, I observed Inmate HILL, H-67149 pick up a broom from the lower tier and go up the stairs. HILL was going in the direction of "A" section upper tier. Inmate HILL started to strike Inmate MARTIN, K-65209 with the broom handle and striking him in the upper torso and head in front of cell 212. I ordered both inmates to get down with negative results. I fired one (1) round from my 40mm direct impact weapon, serial # GS0902 and aimed at zone 1 at assailant Inmate HILL, after I fired Inmate MARTIN proned out in front of cell 212 and Inmate HILL ran towards the stairwell in front of 205. I instructed Inmate HILL to prone out on the tier. I continued to cover the area until both inmates were removed from the building. Later after reviewing the medical report I found out that Inmate MARTIN was struck in the lower leg but aimed at Inmate HILL but struck MARTIN due to the wrestling on the tier.

On Wednesday, February 09, 2005, at approximately 1950 hours, I interviewed Correctional Officer T. ROCHA, who answered the following questions.

1.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours 3 and 4 PM, inform you, Correctional Officer T. ROCHA that my self and Inmate MARTIN, K-65209 were not getting along (non compatible) and that I wanted to move?

(A) Inmate HILL requested a bedmove. I informed the Sergeant who said convenience moves are done on 2nd watch. Inmate HILL never said it was an urgent matter.

2.(Q) On January 19, 2005, did Inmate HILL, H-67149, between the hours of 3 and 4 PM inform you, Correctional Officer T. ROCHA that I needed to be released from my cell in order to retrieve my radio because me and Inmate MARTIN, K-65209 were not getting along (non compatible) so I can try to get a cell move?

(A) No.

<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER N. MEJIA, Correctional Officer		DATE SIGNED 2-15-05
	GIVEN BY: (Staff's Signature) <i>[Signature]</i>	DATE SIGNED 2-15-05	TIME SIGNED 2000

STATE OF CALIFORNIA

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MAR 11 2005

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE ____ OF ____

CDC NUMBER H-67149	INMATE'S NAME HILL	LOG NUMBER 01-05-A-043	INSTITUTION CSP-CAL	TODAY'S DATE 02/08/05
<input type="checkbox"/> SUPPLEMENTAL <input type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input type="checkbox"/> HEARING <input checked="" type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER				

On Thursday, February 10, 2005, at approximately 1655 hours I interviewed Correctional Office GOMEZ, who answered the following questions.

1.(Q) On January 19, 2005, did I, Inmate HILL, H-67149, between the hours of 3 and 4 PM inform you, Correctional Officer H. GOMEZ that my self and Inmate MARTIN, K-65209 were not getting along (non compatible) and that I wanted to move?

(A) He stated he wanted a bed move, but did not state him and his cellie were not getting along.

2.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours of 3:30 and 3:50 P inform you, Correctional Officer H. GOMEZ, during your evening count that I needed to be released from my cell in order to retrieve some personal property because me and Inmate MARTIN K-65209 were not getting along (non compatible) and that I wanted to move?

(A) No.

3.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours of 4:05 and 4:25 P after you performed your evening count inform you Correctional Officer H. GOMEZ that I needed to move in which you informed me that no cell moves are performed on 3rd watch?

(A) Yes, however you never mentioned that you and your cellie were not getting along.

4.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours 1700 and 1716 hour question you, Correctional Officer H. GOMEZ at the podium during the evening meal release about why you did not assist me in getting a cell move as well as in me getting my Superradio III?

(A) No, I told you that convenience moves were done during 2/W hours.

NOTHING FURTHER FROM INMATE HILL

INMATE HILL Requests' Correctional Officer's T. ROCHA and H. GOMEZ as witnesses.

Inmate HILL DOES NOT request the Reporting Employee at the hearing.

Inmate HILL DOES NOT request the Investigative Employee at the hearing.

Inmate HILL DOES NOT request Inmate witnesses at the hearing.

This concludes my report.

<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE	SIGNATURE OF WRITER N. MESIA, Correctional Officer	DATE SIGNED 2-15-05	
	GIVEN BY: (Staff's Signature) <i>[Signature]</i>	DATE SIGNED 2-15-05	TIME SIGNED 2000

REC'D CAL APPEALS
MAR 11 2005

05 0468

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC 128 A (8-87)

NAME AND NUMBER HILL H-67149 A5-132

On Wednesday, February 16, 2005, at approximately 2000 hours, you appeared before Correctional Lieutenant J. JIMENEZ, for adjudication of CDC-115, Log #01-05-A-043. You were found GUILTY and assessed the following LOSS OF PRIVILEGES.

10 Days LOSS OF YARD, Beginning 02/16/05 and Ending 02/26/05.

ORIG: C-File

CC: Correctional Lieutenant

CC I

Housing Unit

Inmate

J. JIMENEZ, Correctional Lieutenant
Senior Hearing Officer
Facility "A" 3/W

(DISPOSITION OF CDC-115/LOSS OF PRIVILEGES)

DATE FEBRUARY 16, 2005

CUSTODIAL COUNSELING

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC 128 A (8-87)

NAME AND NUMBER HILL H-67149 A5-132

On Wednesday, February 16, 2005, at approximately 2000 hours, Inmate HILL appeared before Correctional Lieutenant J. JIMENEZ, for adjudication of CDC-115, Rules Violation Report, Log # 01-05-A-043, for the specific Act of "BATTERY ON AN INMATE WITH A WEAPON". Inmate HILL was found guilty and referred to Institutional Classification Committee with the recommendation for SHU Assessment. Inmate HILL is also referred to the Institutional Psychiatrist for evaluation before SHU Term assessment per the Madrid decision.

ORIG: C-File

CC: Correctional Lieutenant

CC I

Housing Unit

Inmate

J. JIMENEZ, Correctional Lieutenant
Senior Hearing Officer
Facility "A" 3/W

(MADRID/CHRONO)

DATE FEBRUARY 16, 2005

CUSTODIAL COUNSELING

7219 on

I/m martin

EX. 2

05 0468

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

MEDICAL REPORT OF INJURY
OR UNUSUAL OCCURRENCE

NAME OF INSTITUTION CALIPATRIA	FACILITY/UNIT FAC A3	REASON FOR REPORT (circle) INJURY USE OF FORCE UNUSUAL OCCURRENCE	ON THE JOB INJURY PRE AD/SEG ADMISSION	DATE 01/19/05
THIS SECTION FOR INMATE ONLY	NAME LAST MARTIN	FIRST	CDC NUMBER K-65209	HOUSING LOC. A3-134
THIS SECTION FOR STAFF ONLY	NAME LAST	FIRST	BADGE #	RANK/CLASS
THIS SECTION FOR VISITOR ONLY	NAME LAST	FIRST	MIDDLE	DOB
	HOME ADDRESS	CITY	STATE	ZIP
				HOME PHONE

PLACE OF OCCURRENCE A3-DAYROOM	DATE/TIME OF OCCURRENCE 01/19/05 1912	NAME OF WITNESS(ES)
TIME NOTIFIED 1912	TIME SEEN 1912	ESCORTED BY on site
MODE OF ARRIVAL (circle) AMBULATORY	LITTER	WHEELCHAIR
AGE 31	RACE B	SEX M

BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE

"Hey! WTA my leg got big!" "I got hit by the cop with 2 round!"

INJURIES FOUND? (YES/NO)

Abrasion/Scratch	1
Active Bleeding	2
Broken Bone	3
Bruise/Discolored Area	4
Burn	5
Dislocation	6
Dried Blood	7
Fresh Tattoo	8
Cut/Laceration/Slash	9
O.C. Spray Area	10
Pain	11
Protrusion	12
Puncture	13
Reddened Area	14
Skin Flap	15
Swollen Area	16
Other	17

	18
	19

O.C. SPRAY EXPOSURE? YES (NO)

DECONTAMINATED? YES (NO)

Self-decontamination instructions given? YES (NO)

Refused decontamination? YES (NO)

Q 15 min. checks

Staff issued exposure packet? YES (NO)

RN NOTIFIED/TIME

PHYSICIAN NOTIFIED/TIME

TIME/DISPOSITION

Reasons in custody

1935 1/19/05

REPORT COMPLETED BY/TITLE (PRINT AND SIGN)

L. [Signature]

BADGE #

68709

RDOs

5/5

(Medical data is to be included in progress note or emergency care record filed in UHR)

05 0461

STATE OF CALIFORNIA

MEDICAL REPORT OF INJURY
OR UNUSUAL OCCURRENCE

DEPARTMENT OF CORRECTIONS

REC'D CAL APPEALS
MAR 23 2005

NAME OF INSTITUTION <u>CAL SP</u>	FACILITY/UNIT <u>A TARD</u>	REASON FOR REPORT (circle) USE OF FORCE <u>UNUSUAL OCCURRENCE</u>	INJURY <u>ON THE JOB INJURY</u>	ON THE JOB INJURY PRE AD/SEG ADMISSION	DATE <u>1/19/05</u>
THIS SECTION FOR INMATE ONLY	NAME LAST <u>HILL</u> FIRST <u>HILL</u>	CDC NUMBER <u>H07149</u>	HOUSING LOC. <u>A3 134</u>	NEW HOUSING LOC.	
THIS SECTION FOR STAFF ONLY	NAME LAST <u>HILL</u> FIRST <u>HILL</u>	BADGE #	RANK/CLASS	ASSIGNMENT/RDOs	
THIS SECTION FOR VISITOR ONLY	NAME LAST <u>HILL</u> FIRST <u>HILL</u> MIDDLE <u>HILL</u>	DOB	OCCUPATION		
HOME ADDRESS		CITY	STATE	ZIP	HOME PHONE
PLACE OF OCCURRENCE <u>A-3</u>	DATE/TIME OF OCCURRENCE <u>1/19/05</u>	NAME OF WITNESS(ES) <u>F</u>			
TIME NOTIFIED <u>1720</u>	TIME SEEN <u>1720</u>	ESCORTED BY <u>CID</u>	MODE OF ARRIVAL (circle) <u>AMBULATORY</u>	LITTER <u>ON SITE</u>	WHEELCHAIR
AGE <u>34</u>	RACE <u>BLK</u>	SEX <u>♂</u>			

BRIEF STATEMENT IN SUBJECT'S WORDS OF THE CIRCUMSTANCES OF THE INJURY OR UNUSUAL OCCURRENCE

"I ALREADY TOLD THE POLICE WE WEREN'T GETTING ALONG"

INJURIES FOUND? YES / NO

Abrasion/Scratch	1
Active Bleeding	2
Broken Bone	3
Bruise/Discolored Area	4
Burn	5
Dislocation	6
Dried Blood	7
Fresh Tattoo	8
Cut/Laceration/Slash	9
O.C. Spray Area	10
Pain	11
Protrusion	12
Puncture	13
Reddened Area	14
Skin Flap	15
Swollen Area	16
Other	17

1 cm scrape(R) orbital bone Fupper lip F (R)upper lip F (R)

O.C. SPRAY EXPOSURE? YES / NO

DECONTAMINATED? YES / NO

Self-decontamination instructions given? YES / NO

Refused decontamination? YES / NO

Q 15 min. checks

Staff issued exposure packet? YES / NO

RN NOTIFIED/TIME

PHYSICIAN NOTIFIED/TIME

TIME/DISPOSITION

1725 / Program 11/19/05

REPORT COMPLETED BY/TITLE (PRINT AND SIGN)

BADGE #

RDOs

KATH MUMER KATH MUMER00707 F.S.

(Medical data is to be included in progress note or emergency care record filed in UHR)

R V R

EX - 3

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT

CDC NUMBER H-67149	INMATE'S NAME HILL	RELEASE/BOARD DATE	INST. CSP-CAL	HOUSING NO. A3-134L	LOG NO. 01-05-A-04
VIOLATED RULE NO(S). 3005 (b)		SPECIFIC ACTS BATTERY ON AN INMATE W/WEAPON	LOCATION A3-Floor	DATE 01/19/05	TIME 1716

CIRCUMSTANCES

On Wednesday, January 19, 2005, at approximately 1716 hours while performing my duties as A3-Control Booth Officer I observed Inmate HILL, H-67149 pick up a Broom from the lower tier and go up the stairs. HILL was going in the direction of "A" Section upper tier. Inmate HILL started striking Inmate MARTIN, H-65209 with the Broom Handle and striking him in the upper torso and head in front of cell 212. I ordered both inmates to get down but they did not comply I fired One (1) round from my 40mm Direct Impact Weapon, Serial #GS0902 and aimed at zone 1 at the assailant Inmate HILL. After I fired Inmate MARTIN pruned out in front of cell 212 and Inmate HILL ran towards the stairwell in front of cell 205. I instructed Inmate HILL to prune out on the tier. I continued to cover the area until both inmates were removed from the building later after reviewing the medical report I found out that Inmate MARTIN was struck in the lower leg but I aimed at Inmate HILL but struck MARTIN due to the wrestling on the tier. Inmate HILL is not a participant in the Mental Health Services Delivery System (MHSDS). Inmate HILL is aware of this report.

REPORTING EMPLOYEE (Typed Name and Signature) T. DAVIS, Correctional Officer		DATE 01/19/05	ASSIGNMENT A3-Control Booth	RDO'S Mon/Tue
REVIEWING SUPERVISOR'S SIGNATURE V. HUGH, Correctional Sergeant		DATE 1/20/05	<input type="checkbox"/> INMATE SEGREGATED PENDING HEARING	
CLASSIFIED <input type="checkbox"/> ADMINISTRATIVE <input type="checkbox"/> SERIOUS	OFFENSE DIVISION: A3	DATE 1/19/05	CLASSIFIED BY (Typed Name and Signature) [Signature]	LOC. 19-70
			HEARING REFERRED TO <input type="checkbox"/> HO <input checked="" type="checkbox"/> SHO <input type="checkbox"/> SC <input type="checkbox"/> FC	
COPIES GIVEN INMATE BEFORE HEARING				
<input type="checkbox"/> CDC 115	BY: (STAFF'S SIGNATURE) [Signature]	DATE 1/19/05	TIME 1930	TITLE OF SUPPLEMENT
<input type="checkbox"/> INCIDENT REPORT LOG NUMBER:	BY: (STAFF'S SIGNATURE) [Signature]	DATE	TIME	BY: (STAFF'S SIGNATURE) [Signature]
		DATE	TIME	

HEARING

REFERRED TO ☐ CLASSIFICATION ☐ BPT/NAEA

ACTION BY: (TYPED NAME)

SIGNATURE [Signature]		DATE	TIME
REVIEWED BY: (SIGNATURE) [Signature]	DATE	CHIEF DISCIPLINARY OFFICER'S SIGNATURE [Signature]	DATE
BY: (STAFF'S SIGNATURE) [Signature]		DATE	TIME

☐ COPY OF CDC 115 GIVEN INMATE AFTER HEARING

CDC 115 (7/88)

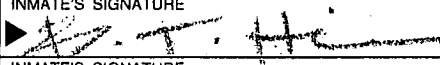
STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

SERIOUS RULES VIOLATION REPORT

CDC NUMBER H-67149	INMATE'S NAME HILL	VIOLATED RULE NO(S) 3005 (b)	DATE 01/19/05	INSTITUTION CSP-CAL	LOG NO. 01-05-A-043
------------------------------	------------------------------	--	-------------------------	-------------------------------	-------------------------------

REFERRAL FOR FELONY PROSECUTION IS LIKELY IN THIS INCIDENT. ☒ YES ☐ NO**POSTPONEMENT OF DISCIPLINARY HEARING**

<input checked="" type="checkbox"/> I DO NOT REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE 	DATE 2/1/05
<input type="checkbox"/> I REQUEST my hearing be postponed pending outcome of referral for prosecution.	INMATE'S SIGNATURE	DATE

DATE NOTICE OF OUTCOME RECEIVED	DISPOSITION
---------------------------------	-------------

<input type="checkbox"/> I REVOKE my request for postponement.	INMATE'S SIGNATURE	DATE
--	--------------------	------

STAFF ASSISTANT

STAFF ASSISTANT	INMATE'S SIGNATURE	DATE
<input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE		
<input type="checkbox"/> ASSIGNED	DATE	NAME OF STAFF
<input type="checkbox"/> NOT ASSIGNED	REASON WAS NOT AVAILABLE FOR HEARING	

INVESTIGATIVE EMPLOYEE

INVESTIGATIVE EMPLOYEE	INMATE'S SIGNATURE	DATE
<input type="checkbox"/> REQUESTED <input type="checkbox"/> WAIVED BY INMATE		
<input checked="" type="checkbox"/> ASSIGNED	DATE 2/1/05	NAME OF STAFF AVILA
<input type="checkbox"/> NOT ASSIGNED	REASON 1	

EVIDENCE / INFORMATION REQUESTED BY INMATE:

WITNESSES

WITNESSES REQUESTED AT HEARING (IF NOT PRESENT, EXPLAIN IN FINDINGS)					
<input type="checkbox"/> REPORTING EMPLOYEE	<input type="checkbox"/> STAFF ASSISTANT	<input type="checkbox"/> INVESTIGATIVE EMPLOYEE	<input type="checkbox"/> OTHER	<input type="checkbox"/> NONE	
WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)		GRANTED	NOT GRANTED	WITNESSES (GIVE NAME AND TITLE OR CDC NUMBER)	
de Gama		<input type="checkbox"/>	<input type="checkbox"/>		
de Rocha		<input type="checkbox"/>	<input type="checkbox"/>		

INVESTIGATIVE REPORT: Investigative Employees must interview the inmate charged, the reporting employee, and any others who have significant information, documenting the testimony of each person interviewed. Review of files, procedures, and other documents may also be necessary.

	INVESTIGATOR'S SIGNATURE 	DATE
<input type="checkbox"/> COPY OF CDC 115-A GIVEN INMATE	BY: (STAFF'S SIGNATURE) 	TIME
		DATE

To Mock 2's

9 1/2 A's

To I. E. Report

Ex 4

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE ____ OF ____

CDC NUMBER H-67149	INMATE'S NAME HILL	LOG NUMBER 01-05-A-043	INSTITUTION CSP-CAL	TODAY'S DATE 02/08/05
<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input type="checkbox"/> HEARING <input checked="" type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER			

On Tuesday, February 08, 2005, I informed Inmate HILL, H-67149, A3-132L, that I had been assigned as the Investigative Employee for Rules Violation Report, Log #01-05-A-043 charging him with violation of CCR #3005 (b). I explained to Inmate HILL that my function was to: collect information, interview him, the Reporting Employee and all witnesses having information about the incident. Inmate HILL stated that he understood my function and expressed no objections to my assignment. Therefore, as the assigned and accepted Investigator, I conducted the investigation and submit the findings in this report.

CHARGED INMATE STATEMENT: On Saturday, February 08, 2005, at approximately 1935 hours, I interviewed Inmate HILL who the following:

STATEMENT: " I have no statement."

On Tuesday, February 08, 2005, at approximately 1950 hours I interviewed Correctional Officer T. DAVIS, who stated the following:

STATEMENT: " On Wednesday, January 19, 2005, at approximately 1716 hours, I observed Inmate HILL, H-67149 pick up a broom from the lower tier and go up the stairs. HILL was going in the direction of "A" section upper tier. Inmate HILL started to strike Inmate MARTIN, K-65209 with the broom handle and striking him in the upper torso and head in front of cell 212. I ordered both inmates to get down with negative results. I fired one (1) round from my 40mm direct impact weapon, serial # GS0902 and aimed at zone 1 at assailant Inmate HILL, after I fired Inmate MARTIN prone out in front of cell 212 and Inmate HILL ran towards the stairwell in front of 205. I instructed Inmate HILL to prone out on the tier. I continued to cover the area until both inmates were removed from the building. Later after reviewing the medical report I found out that Inmate MARTIN was struck in the lower leg but aimed at Inmate HILL but struck MARTIN due to the wrestling on the tier.

On Wednesday, February 09, 2005, at approximately 1950 hours, I interviewed Correctional Officer T. ROCHA, who answered the following questions.

1.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours 3 and 4 PM, inform you, Correctional Officer T. ROCHA that my self and Inmate MARTIN, K-65209 were not getting along (non compatible) and that I wanted to move?

(A) Inmate HILL requested a bedmove. I informed the Sergeant who said convenience moves are done on 2nd watch. Inmate HILL never said it was an urgent matter.

2.(Q) On January 19, 2005, did Inmate HILL, H-67149, between the hours of 3 and 4 PM inform you, Correctional Officer T. ROCHA that I needed to be released from my cell in order to retrieve my radio because me and Inmate MARTIN, K-65209 were not getting along (non compatible) so I can try to get a cell move?

(A) No.

SIGNATURE OF WRITER N. MEJIA, Correctional Officer		DATE SIGNED 2-15-05	
GIVEN BY: (Staff's Signature)		DATE SIGNED 2-15-05	TIME SIGNED 2:00
<input type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE			

9 $\frac{1}{2}$ A's For

H. Gomez

I. E. - Report

Ex. 5

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

RULES VIOLATION REPORT - PART C

PAGE ____ OF ____

CDC NUMBER H-67149	INMATE'S NAME HILL	LOG NUMBER 01-05-A-043	INSTITUTION CSP-CAL	TODAY'S DATE 02/08/05
<input type="checkbox"/> SUPPLEMENTAL	<input type="checkbox"/> CONTINUATION OF: <input type="checkbox"/> 115 CIRCUMSTANCES <input type="checkbox"/> HEARING <input checked="" type="checkbox"/> IE REPORT <input type="checkbox"/> OTHER _____			

On Thursday, February 10, 2005, at approximately 1655 hours I interviewed Correctional Officer GOMEZ, who answered the following questions.

1.(Q) On January 19, 2005, did I, Inmate HILL, H-67149, between the hours of 3 and 4 PM inform you, Correctional Officer H. GOMEZ that my self and Inmate MARTIN, K-65209 were not getting along (non compatible) and that I wanted to move?

(A) He stated he wanted a bed move, but did not state him and his cellie were not getting along.

2.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours of 3:30 and 3:50 P inform you, Correctional Officer H. GOMEZ, during your evening count that I needed to be released from my cell in order to retrieve some personal property because me and Inmate MARTIN K-65209 were not getting along (non compatible) and that I wanted to move?

(A) No.

3.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours of 4:05 and 4:25 P after you performed your evening count inform you Correctional Officer H. GOMEZ that I needed to move in which you informed me that no cell moves are performed on 3rd watch?

(A) Yes, however you never mentioned that you and your cellie were not getting along.

4.(Q) On January 19, 2005, did I, Inmate HILL, H-67149 between the hours 1700 and 1716 hours question you, Correctional Officer H. GOMEZ at the podium during the evening meal release about why you did not assist me in getting a cell move as well as in me getting my Superradio III?

(A) No, I told you that convenience moves were done during 2/W hours.

NOTHING FURTHER FROM INMATE HILL

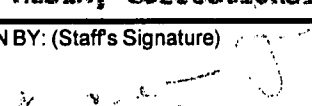
INMATE HILL Requests' Correctional Officer's T. ROCHA and H. GOMEZ as witnesses.

Inmate HILL DOES NOT request the Reporting Employee at the hearing.

Inmate HILL DOES NOT request the Investigative Employee at the hearing.

Inmate HILL DOES NOT request Inmate witnesses at the hearing.

This concludes my report.

SIGNATURE OF WRITER, N. MEJIA, Correctional Officer		DATE SIGNED 2-15-05	
GIVEN BY: (Staff's Signature) 		DATE SIGNED 2-15-05	TIME SIGNED 2:00
<input checked="" type="checkbox"/> COPY OF CDC 115-C GIVEN TO INMATE			

602 Form

Ex. 6

INMATE/PAROLEE
APPEAL FORM
CDC 802 (12/87)

Log No.

1. 05 0468

Category

#1

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
B. Hall	H67149	Ad-509	#B-6A-26

A. Describe Problem: On Feb. 16th, 2005 a Lt. J. Timene proceeded to hear a c.v.c. 115 without calling the witnesses as was requested by the Appellant in violation of c.c.r. Title 15, Subsec. 3315(e), (e)(1); the presence of the I.E. in violation of c.c.r. Title 15, Subsec. 3315(e)(4); deliberately "Failed" to "consider" mitigation.

If you need more space, attach one additional sheet.

B. Action Requested: For this guilty finding to be reversed; all points that were add to the Appellants Classification Score in regards to 115 reduced; the time that was add

Inmate/Parolee Signature: B. Hall Date Submitted: 3/6/05

C. INFORMAL LEVEL (Date Received: _____)

Staff Response: _____

Staff Signature: _____ Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Chrono, CDC 428, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____ Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed

Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:

05 0468

SCREEN OUT
MAR 18 2005

ret

First Level ☐ Granted ☐ P. Granted ☐ Denied ☐ Other _____

E. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: _____ Due Date: _____

Interviewed by: _____

Staff Signature: _____

Title: _____

Date Completed: _____

Division Head Approved: _____

Returned _____

Signature: _____

Date to Inmate: _____

F. If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

CSP-CAL BY-PASS

Signature: _____

Date Submitted: _____

Second Level ☐ Granted ☐ P. Granted ☒ Denied ☐ Other _____

MAR 25 2005

Due Date: 5-5-05

G. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: _____

☐ See Attached Letter

Signature: _____

D.W. Bell

Date Completed: 4/28/05

Warden/Superintendent Signature: _____

[Signature]

Date Returned to Inmate: MAY 03 2005

H. If dissatisfied, add data or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Do unto the "Falsification" of the "Sto's" findings (Lt. J. Jimenez) and "D.W. Bell's" alleged "Investigation" warrants review. On April 26th 2005 I call D.W. Bell approached the Appellant's cell door under the guise of interviewing the Appellant concerning this 602

Signature: _____

P. T. H.

Date Submitted: 6/7/2005

For the Director's Review, submit all documents to: Director of Corrections
P.O. Box 942883
Sacramento, CA 94283-0001
Attn: Chief, Inmate Appeals

received on 8-11-05 & 10-25-05 unanswered

DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☐ Denied ☐ Other _____

☐ See Attached Letter

Date: _____

REC'D CAL APPEALS
MAY 03 2005

REC'D CAL APPEALS
MAR 11 2005

05 0468

concluding Section A:

Factors in regards to these findings in violation of c.c.r. title 15 Subsec. 3341.5; Subsec. 3315(f); exercised a predetermination of the Appellant's guilt by excepting the rule violation report and I.E.'s report as written in violation of c.c.r. title 15, Subsec. 3320(h); the Appellant was denied the right to present documentary evidence in violation of c.c.r. title 15, Subsec. 3320(i); Due Process and not limited to.

continuing Section B:

(360) days deducted; for the Appellant to be recorded all his rights; and on this guilty finding reduced and not limited to;

continuing Section H: in which D.W. Bell deliberately "Failed" to and blatantly "Refused" to "allow"

the Appellant to present a defense to these allegations (see Second Level Response, no remarks as illustrated to D.W. Bell by the Appellant noted) in violation of c.c.r. title 15, Subsec. 3084.5 (e)(1), (f)(1), etc... in regards to the SHO's deliberate "Failure" to "call" C/O H. Gomez as a witness as was requested in violation of c.c.r. title 15, Subsec. 3084.5 (h)(2)(D), 3315 (e), (e)(1) and or make C/O H. Gomez available by phone in violation of Subsec. 3315 (e)(b); the Appellants I.E. for a witness and in violation of these same Subsections; the SHO's blatant "Failure" to and deliberate "Refusal" to "consider" mitigating factors in the Appellants favor in violation of Subsec. 3084.5 (h)(2)(E), 3320 (L), 3341.5 (c)(10)(A); the fact that the Appellant was "Not" charged with committing an act of "Force or Violence" in violation of Subsec. 3005 (c) but disobeying an order in violation of Sec. 3005 (b); the SHO's deliberate

continuing Section 4: "Failure" to "Allow" the Appellant to Present documentary evidence (Elm Martin's medical report; Part A1, pp. 1 of 1 - 3 of 11 of this crime (incident report)) in violation of Subsec. 3084.5(h)(2)(E), 3320(1) in order ^{to see if} ~~that~~ a "serious injury" was noted as defined in Subsec. 3000; as to the Stto's exercise of a Predetermination ~~as to~~ the Appellants' guilt in violation of Subsec. 3320(h); as to the denial of the Appellants' Due Process rights and not limited to.

D.W. Bell cites at p. 4 of this Second Level Response that "I appeared before an experienced Stto J. Ries at which time you were found guilty of Battery on an inmate with a weapon" in which is "False" and "Fabricated" because a Stto J. Jimenez heard this US not J. Ries (see C.D.C. 115, 115A, 115C)

in which demonstrates that SMO J. Timenez was "Not" interviewed and or this investigated in violation of C.I.R. title 15 Subsec. 3084.5(e)(1), (f), and (c).

D.W. Bell call further states at pg. 4-B "that the Appellant requested witnesses, this request was granted, that C/O H. Gomez was out on medical leave during this hearing, that the Appellant excepted these questions and answers, refused to sign the C.D.C. 115A acknowledging acceptance of these questions and answers, that a C/O Steele witnessed these events, and that the SMO elected to proceed with this 115 hearing" in which is "Fabricated" and "False" in violation of Section 3084.5(h)(1)(A) and not limited to.

If the 115C, p. 2 of 2, is examined, the reviewer will acknowledge that there is "No" Verbal "Quotes"

continuing Section H: of this alleged acceptance of these questions and answers as to the I.E.'s report on C/O H. Gomez, no signature, etc... as a "quote" is "given" in the form of a statement by the Appellant as illustrated on p. 1 of 2 of this USC in which demonstrates that this alleged "Acceptance" of this "I.E.'s Report" as to C/O H. Gomez and this alleged "waiver" to this "C/O" as a witness is "Fabricated" and was "Falsified" in violation of Section 3084.5 (h) (1) (4), (h) (2) (D), and not limited to, as well as 3315(a).

Also, if these questions and answers were accepted, why wasn't C/O T. Rocha's 9 and 2 signed since he was questioned by phone? in which further demonstrates the Appellants non-acceptance of these 9 and 2's and shows that their

"False" and were "Fabricated" in violation of C.E.R. Title 15, Section 3084.5 (U)(1)(A) and not limited to and that the Appellant was denied a witness.

If this Second Level Response is further examined, the reviewer will acknowledge that D.W. Bell ~~case~~ never "addresses" the Appellant "allegations" of being denied the right to call this I.E. as a witness, the right to present documentary evidence (Tim Martin's medical report; this crime / incident report Part 1A PP. 1 of 11 through 3 of 11; and not limited to) that the SHO never considered the Appellants mitigating factors, exercised a pre-determination of the Appellants ~~mitigating factors~~, exercised a ~~pre~~ ~~guilt~~ by accepting this RVR and I.E.'s report as written, was denied Due Process and not limited to.

D.W. Bell ~~case~~ further alleges at p. 5 of this Second Level Response

continuing Section 4: that the Appellant did not "Provide new or compelling evidence to the RVR" in which is "Fabricated" and "False" because if this C.D.C. 115c, Page 1 of 1 and 2 of 2 is examined, there's "No" mention by the SMO that he considered ~~the~~ Martin's medical report; this crime / incident report Part 1, pp. 1 of 11 - 3 of 11 in order to "Assess" whether if a "Serious Injury" was noted or not and used this info. in order to sustain a finding of Guilt for the actual charge and or reduce it; considered mitigating factors as to the Appellants prior disciplinary history; if the Appellant feared for his safety; whether this incident was Planned or Situational and Spontaneous, etc.; whether the Appellant requested and or was given the chance to request this I.E. as a witness;

was denied this right and or request; Due Process; and not limited to.

Also, the Appellant requested that this I.E. investigate the reporting employee's, Cols T. Rocha's, and H. Gomez background for acts of prior falsified C.D.C. 115's, complaints that's been filed against them by inmates, staff, and civilians in order to assess their credibility as witnesses, this I.E. deliberately "Failed" to and blatantly "Refused" to "Perform" such a task in violation of C.D.C.R. Title 15, Sections 3084.5(h)(2)(E), 3315(d)(1), 3450(2), and not limited to, the SHO "addresses" this "Issue" as to the reporting employee only and "Denied" the "Appellant" this right in violation of Sections 3084.5(h)(2)(E), 3320(1)(d), et. seq. (See p. 2 of 2 of this C.D.C. 115c) and D.W. BRH cc# Never "Addresses" this

continuing Section H: "Issue" not investigated it in which further shows that relief is warranted.

Therefore, in the interest of justice and based upon these factors this guilty finding must be reversed, this is re-issued and reheard, and or dismissed based upon the falsity of this RVR, the I.E.'s reports, this second level of Review Response, the denial of the right to a fair hearing and future fair hearing(s) per C.E.R. title 15, sections 3084.5(h)(1), (A), (B), (C), (E)(2), (D), (E), (G), 3315(F)(1), and not limited to!

And what prevented the Appellant from submitting this appeal within fifteen days was the denial of access to the law library in order to mail this box and its

attachments, the manila envelope
to do so, writing material and
not limited to. (see a.c.r. title 15,
subsections 3084.2(c), 3084.3(c)(6), and 3084.5
(c).)

2nd level response

Ex. 7

REC'D CAL APPEALS

05 0468

State of California

CDC FORM 695

Screening For:

CDC 602 Inmate/Parolee Appeals

CDC 1824 Reasonable Modification or Accommodation Request

RE: Screening at the SECOND Level

March 18, 2005 : received back on 3/21/05
unprocessed

HILL, H67149

FA0500000000132L

Log Number: CAL-A-

(Note: Log numbers are not assigned to screen out appeals, or informal level appeals)

The enclosed documents are being returned to you for the following reasons:

You disciplinary appeal is incomplete. You must attach legible copies of all documents you received during the disciplinary process. For example: the completed CDC 115, Rule Violation Report, the laboratory report, the Mental Health Assessment Form, the completed CDC 115-A, Serious Rule Violation Report, the CDC 115, Investigative Employee report, supplemental reports for the CDC 115, the CDC 7219, Report of Injury, the complete CDC 837, Incident Report, and the CDC 1030, Confidential Information Disclosure Form.

You need to attach a copy of your CDC 837 report, CDC 7219 reports , and all other reports revelant to your disciplinary hearing.



Appeals Coordinator

CALIPATRIA STATE PRISON

NOTE: Failure to follow instruction(s) will be viewed as non-cooperation and your appeal will be automatically dismissed pursuant to CCR 3084.4(d). This screening decision may not be appealed. If you believe this screen out is in error, please return this form to the Appeals Coordinator with an explanation of why you believe it to be in error, and supporting documents. You have only 15 days to comply with the above directives.

PERMANENT APPEAL ATTACHMENT - DO NOT REMOVE

REC'D CAL APPEALS

State of California MAY 03 2005

Department of Corrections

Memorandum

Date: April 28, 2005

To: Hill, H-67149
Calipatria State Prison

Subject: SECOND LEVEL APPEAL RESPONSE
LOG NO.: CAL 05-00468

ISSUE:

The appellant is submitting this appeal relative to CDC Form 115, Rules Violation Report (RVR), Log #01-05-A-043, dated January 19, 2005, for Battery on an Inmate with a Weapon. It is the appellant's position that the Senior Hearing Officer (SHO), inappropriately found you guilty of the aforementioned RVR on Wednesday, February 16, 2005. You allege your due process rights were violated due to you were denied witnesses that you requested to be present at your disciplinary hearing. You allege this is a violation of California Code of Regulations (CCR), Title 15, Section 3315(e)(1). You further allege you were denied the right to present documentary evidence, which you allege is a violation of CCR, Title 15, Section 3320(1). You allege the SHO deliberately failed to consider mitigating factors in regards to the findings, in which you allege is a violation of CCR, Title 15, Section 3341.5.

The appellant requests on appeal that the disposition relative to the RVR is reversed, your Classification Score be adjusted accordingly, and the forfeiture of credit be voided.

INTERVIEWED BY: D.W. Bell, Correctional Counselor II, on April 26, 2005.

REGULATIONS: The rules governing this issue are:

CCR 3005. Conduct.

(a) Inmates and parolees shall obey all laws, regulations, and local procedures, and refrain from behavior which might lead to violence or disorder, or otherwise endangers facility, outside community or another person.

(b) Obeying Orders. Inmates and parolees must promptly and courteously obey written and verbal orders and instructions from department staff, and from employees of other agencies with authorized responsibility for the custody and supervision of inmates and parolees.

(c) Force or Violence. Inmates shall not willfully commit or assist another person in the commission of a violent injury to any person or persons, including self mutilation or attempted suicide, nor attempt or threaten the use of force or violence upon another person. Inmates shall not willfully attempt to incite others, either verbally or in writing, or by other deliberate action, to use force or violence upon another person.

HILL, H-67149
CAL-05-00468
PAGE 2

CCR 3312. Disciplinary Methods.

(a) Inmate misconduct shall be handled by:

(1) Verbal Counseling. Staff may respond to minor misconduct by verbal counseling. When verbal counseling achieves corrective action, a written report of the misconduct or counseling is unnecessary.

(2) Custodial Counseling Chrono. When similar minor misconduct recurs after verbal counseling or if documentation of minor misconduct is needed, a description of the misconduct and counseling provided shall be documented on a CDC Form 128-A, Custodial Counseling Chrono. A copy of the completed form shall be provided to the inmate and the original placed in the inmate's central file. Disposition of any contraband involved shall be documented in the CDC Form 128-A.

*-(3) Rules Violation Report. When misconduct is believed to be a violation of law or is not minor in nature, it shall be reported on a CDC Form 115 (Rev. 7/88), Rules Violation Report.

(A) Unless an inmate charged with serious misconduct requires temporary administrative segregation pursuant to section 3335(b) pending adjudication of the disciplinary charges, the inmate may be retained in regularly assigned housing, work, and program assignments.

(B) If the inmate is placed in segregated housing pending the disciplinary proceedings, the official making the housing decision shall ensure compliance with the provisions of article 7 of this subchapter.

(b) Chief Disciplinary Officer Review of Disciplinary Actions. All disciplinary methods and actions shall be reviewed by the chief disciplinary officer, who shall be the institution head or a designee not below the level of correctional administrator or parole administrator I.

(1) The chief disciplinary officer shall affirm, reverse or modify the disciplinary action and/or credit forfeiture. The chief disciplinary officer may order a different action, order a different method of discipline, dismiss a charge, order a rehearing of the charge, or combine any of these actions.

(2) Except upon discovery of information or evidence not available or reasonably discoverable at the time of a disciplinary action, an order for a different method of discipline or for rehearing of the charges shall not result in a greater penalty or more severe action than that originally taken.

CCR 3320. Hearing Procedures and Time Limitations.

*-(a) A copy of the CDC Form 115 and all nonconfidential reports to be relied upon in a disciplinary hearing shall normally be provided to the inmate within 24 hours after the CDC Form 115 has been classified serious or administrative and within 30 days of the misconduct, but not later than 15 days from the date the information leading to the charges is discovered by staff or, in the case of an escapee, 15 days after the escapee's return to the department's custody.

(1) Providing the inmate with a copy of the CDC Form 115 may be delayed beyond 15 days, but no more than 30 days, and shall not prohibit forfeiture of credits as a penalty for the misconduct when all of the following criteria are met:

(A) The misconduct could be prosecuted as murder, attempted murder, or battery on staff.

(B) An investigation is continuing to identify others involved in the misconduct.

(C) Within 15 days of discovering the misconduct, a written request to delay the inmate's notification, including the reasons for the delay, is approved by the chief disciplinary officer.

HILL, H-67149
 CAL-05-00468
 PAGE 3

(b) The charges shall be heard within 30 days from the date the inmate is provided a copy of the CDC Form 115 unless the charges were referred for possible prosecution and the inmate has been granted a request for postponement of the disciplinary proceedings pending the outcome of the referral, or if the inmate is transferred out of the custody of the department.

~~*~~ (c) A disciplinary hearing shall not be held until the inmate has been provided:

✓ (1) A copy of the CDC Form 115 and all nonconfidential reports to be relied upon in the hearing, including the investigative employee's report.

• (2) At least 24 hours to review the material and prepare for the hearing. The hearing may be held earlier if the inmate waives the 24-hour period.

(d) A hearing may be postponed up to 30 days upon the inmate's written request showing a reasonable need for postponement. Postponement shall not bar any credit forfeiture.

(e) If a hearing is postponed for any reason, such reason shall be documented in the findings section of the CDC Form 115.

(f) The following events shall preclude denial or forfeiture of credits:

(1) The inmate was not provided a copy of the CDC Form 115 within 15 days after the discovery of information leading to the charges except as otherwise provided in (a).

(2) The official conducting the hearing did not establish that the information or evidence was not reasonably discoverable within 30 days or sooner or when the inmate is not provided a copy of the CDC Form 115 within 15 days of the misconduct, unless (a) is applicable.

(3) The disciplinary hearing was not held within 30 days of the date the inmate was provided a copy of the CDC Form 115, unless the inmate requested and was granted a postponement of the hearing pending outcome of the referral pursuant to section 3316, or if the inmate is transferred out of the custody of the department.

(4) A disciplinary hearing was not held within 30 days after the chief disciplinary officer was notified of the outcome of a prosecution referral or within 30 days of the inmate's revoked request for postponement of the hearing, if an accusatory pleading was not filed against the inmate.

(5) The inmate was not provided a written explanation of the extraordinary circumstances preventing a hearing within 30 days after the inmate was provided a copy of the CDC Form 115 and the official conducting the hearing did not establish in the findings of the hearing that the delay did not prejudice the inmate.

(g) The inmate shall normally be present at a disciplinary hearing. When a disciplinary hearing is held without the inmate present, the reason for the absence shall be documented during the hearing on the CDC Form 115. The inmate shall be present at a disciplinary hearing unless:

(1) A psychiatrist has determined that the inmate suffers from a serious mental disorder preventing the inmate's understanding of or participation in the hearing, and there is a compelling reason or need to proceed with the hearing.

(2) The inmate was convicted of escape in court and has not been returned to the facility or jurisdiction from which the escape occurred.

(3) The inmate has waived the right to be present in writing.

~~*~~ (h) Staff who observed, reported, classified, supplied supplemental reports to, or investigated the alleged rule violation; who assisted the inmate in preparing for the hearing; or for any other reason have a predetermined belief of the inmate's guilt or innocence shall not hear the charges or be present during deliberations to determine guilt or innocence and disposition of the charges.

~~*~~ (i) An inmate witness shall not be transferred between facilities to testify at a hearing unless the chief disciplinary officer of the facility hearing the charges

HILL, H-67149
 CAL-05-00468
 PAGE 4

determines a fair and impartial hearing cannot be conducted unless the witness is present. When a witness is not available, the chief disciplinary officer of the facility where the witness is located shall be notified of the need to appoint an investigative employee to discuss the case with the investigative employee of the facility conducting the disciplinary hearing; to interview the witness, prepare a written investigative report, and forward the report to the facility where the hearing will be conducted.

(j) When an inmate whose rule violation charges are being adjudicated is ordered to leave the hearing room, all witnesses, including staff witnesses, shall also leave the room. The inmate has a right to be present when any witness is present at the hearing.

(k) When a serious rule violation occurs during transportation of an inmate, transporting staff witnesses shall be present at the hearing if requested or shall be available for questioning by telephone during the disciplinary hearing.

~~e~~ (l) The inmate may present documentary evidence in defense or mitigation of the charges. Any finding of guilt shall be based upon determination by the official(s) conducting the disciplinary hearing that a preponderance of evidence submitted at the hearing substantiates the charge. At the conclusion of the disciplinary hearing, the inmate shall be informed of the findings and disposition of the charge and of the right to and procedure for appeal of the action. Within five working days following review of the CDC Form 115 and CDC Form 115-A by the chief disciplinary officer, the inmate shall be provided a copy of the completed CDC Form 115 containing the findings, disposition, and evidence relied upon in reaching the conclusions.

(m) When an inmate is charged with possession of unauthorized or dangerous items or substances, or when unauthorized or dangerous items or substances are associated with commission of the charged rule violation, the hearing official shall record the disposition of the item or substance in the disposition section of the CDC Form 115.

On February 01, 2005, you were served a pre-hearing copy of RVR, Log #01-05-A-043, dated January 19, 2005, for the specific act of Battery on an Inmate with a Weapon. On February 08, 2005, you were served a copy of Incident Report #CAL-FA3-05-01-0037, and a copy of your CDC 7219 Medical of Injury or Unusual Occurrence Report.

On February 16, 2005, at approximately 2000 hours, you appeared before an experienced SHO, J. Ries, at which time you were found guilty of Battery on an Inmate with a Weapon, and assessed 360 days forfeiture of credit consistent with a Division A-1 offense.

On February 28, 2005, the SHO's finding and disposition were reviewed and affirmed by a Chief Disciplinary Officer. On March 03, 2005, you were issued the final copy of the adjudicated RVR.

You plead not guilty at your hearing and elected to make the following statement: "I told the officers that we had problems, and were not getting along."

The SHO considered the statement at the time of the hearing regarding your not guilty plea.

At the time of the hearing you requested witnesses and they were granted. It is noted you requested Correctional Officer (CO) Gomez as a witness. The SHO informed you that CO Gomez was out on medical leave at the time your hearing was being conducted. The Second Level of Review notes the SHO documented

HILL, H-67149
CAL-05-00468
PAGE 5

at the time of the hearing, you stated you accepted the questions and answers from CO Gomez, which is documented in the Investigative Employee (IE) report. The SHO noted your verbal acceptance of the questions and answers provided by CO Gomez in the IE report. The SHO also noted you stated that you were not going to sign the CDC 115-A, acknowledging your verbal acceptance. CO Steele was present at your disciplinary hearing and witnessed your verbal acceptance, and your refusal to sign the CDC 115-A. It is noted the SHO then elected to proceed with the hearing. The SHO was able to review CO Gomez's answers to your questions via the I.E. report.

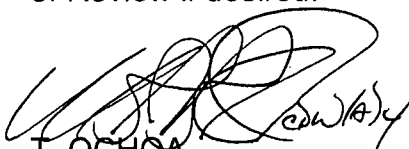
You were assigned an I.E. on February 01, 2005. You were not assigned a Staff Assistant in accordance with CCR, Title 15, Section 3315 (d)(2).

You were found guilty. This finding was based upon the preponderance of evidence submitted at the hearing, which is considered valid and substantiates the charge. This evidence included: 1. The Reporting Employee's written report which states in part; "I observed Inmate Hill, H-67149 pick up a broom from the lower tier and go upstairs. Inmate Hill started striking Inmate Martin, K-65209 with the broom handle and striking him in the upper torso and head in front of cell 212." 2. The SHO reviewed all reports relevant to the CDC 115 hearing. The SHO was convinced that Inmate Hill willfully battered Inmate Martin with the broom handle.

After reviewing the processing of your RVR, it was determined all time constraints were met, procedures were followed, and due process was afforded to you. You provided no new or compelling evidence to the RVR. Therefore, I find no reason to alter the original decision.

DECISION: The appeal is denied.

The appellant is advised that this issue may be submitted for a Director's Level of Review if desired.


T. OCHOA
Chief Deputy Warden (A)
Calipatria State Prison

Dir. response

Ex. 8

STATE OF CALIFORNIA — DEPARTMENT OF CORRECTIONS AND REHABILITATION

ARNOLD SCHWARZENEGGER, GOVERNOR

INMATE APPEALS BRANCH

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



August 2, 2005

*received on 8/11/2005
unprocessed after 60+ days*

Hill, CDC #H-67149
California Correctional Institution
P.O. Box 1031
Tehachapi, CA 93581

Re: Institution Appeal Log #CAL-A-05-0468 Disciplinary

Dear Mr. Hill:

The enclosed documents are being returned to you for the following reasons:

An appellant must submit the appeal within 15 working days of the event or decision being appealed, or of receiving a lower level decision in accordance with CCR 3084.6(c).

Your assigned counselor, the Appeals Coordinator, or your Parole Agent can answer any questions you may have regarding the appeals process. Library staff can help you obtain any addresses you need.

[Signature]
M. GRANNIS, Chief
Inmate Appeals Branch

002 Filed on 8/14/05

EX. 9

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS

INMATE/PAROLEE

APPEAL FORM

CDC 602 (12/87)

Location: Institution/Parole Region

Log No.

Category

1. _____

1. _____

2. _____

2. _____

You may appeal any policy, action or decision which has a significant adverse affect upon you. With the exception of Serious CDC 115s, classification committee actions, and classification and staff representative decisions, you must first informally seek relief through discussion with the appropriate staff member, who will sign your form and state what action was taken. If you are not then satisfied, you may send your appeal with all the supporting documents and not more than one additional page of comments to the Appeals Coordinator within 15 days of the action taken. No reprisals will be taken for using the appeals procedure responsibly.

NAME	NUMBER	ASSIGNMENT	UNIT/ROOM NUMBER
Mr. B. Hill	H67149		4B-6A-5092

A. Describe Problem: On 8/11/05 I received box log# CAL-A-05-0468 back from the chief, Inmate Appeals N. Grannis in which this State Personnel, John Woodford, Director of C.D.C., and others has deliberately "Failed" to "Process" this appeal after retaining it for 60+ days citing that the Appellant has failed to submit this appeal for third level review within

If you need more space, attach one additional sheet.

B. Action Requested: For the attached box log# CAL-A-05-0468 to be processed and answered within 60 days per C.D.C. Title 15 SubSection 3024.6(b)(4); for this appeal to be pro-

Inmate/Parolee Signature: B. HillDate Submitted: 8/14/05

C. INFORMAL LEVEL (Date Received: _____)

received 8/25/05
unanswered

Staff Response: _____

Staff Signature: _____

Date Returned to Inmate: _____

D. FORMAL LEVEL

If you are dissatisfied, explain below, attach supporting documents (Completed CDC 115, Investigator's Report, Classification Chrono, CDC 498, etc.) and submit to the Institution/Parole Region Appeals Coordinator for processing within 15 days of receipt of response.

Signature: _____

Date Submitted: _____

Note: Property/Funds appeals must be accompanied by a completed Board of Control form BC-1E, Inmate Claim

CDC Appeal Number:



continuing Section. A: 15 days of its receipt even though the Appellant explained the reasons for not doing ^{so} in the body of this grievance per C.R.B. title 15, Sub-Sections 3084.2(c), 3084.3(c), and 3084.5(c) excusing this delay in an attempt to circumvent the Appellants court access in violation of Davis vs. Milwaukee County 225 F.2d 917 (E.D. Wis. 2002); Bradley vs. Hale, 64 F.3d 1276 (9th Cir. 1995) and not limited to.

continuing Section. B: Cessed as a citizens complaint per California Penal Code Section 832.5 et. Seq. against all involved parties for not filing and answering box log # CCL-A-05-0468; counseling, admonishing to adhere, cease, and desist from performing such "In-House" Policy(s), Practices, and Procedures;

Incl not limited to.

Second Reflection
by Dir., etc.,

Ex. 10

STATE OF CALIFORNIA - DEPARTMENT OF CORRECTIONS AND REHABILITATION

ARNOLD SCHWARZENEGGER, GOVERNOR

INMATE APPEALS BRANCH

1515 S Street, Sacramento, CA 95814
P.O. Box 942883
Sacramento, CA 94283-0001



October 15, 2005 ; I received on 10/25/05 unanswered

Hill, CDC #H-67149
California Correctional Institution
P.O. Box 1031
Tehachapi, CA 93581


Re: Institution Appeal Log #CAL-A-05-0468 Disciplinary

Dear Mr. Hill:

The enclosed documents are being returned to you for the following reasons:

An appellant must submit the appeal within 15 working days of the event or decision being appealed, or of receiving a lower level decision in accordance with CCR 3084.6(c).

Your assigned counselor, the Appeals Coordinator, or your Parole Agent can answer any questions you may have regarding the appeals process. Library staff can help you obtain any addresses you need.


N. GRANNIS, Chief
Inmate Appeals Branch

EXHIBIT

11

STATE OF CALIFORNIA

DEPARTMENT OF CORRECTIONS
CDC-128G (REV. 2/69)

NO.: H-67149

NAME: HILL

HOUSING: 6A-2009

Custody: MAX CS: 87 LEVEL: IV WG/PG: D2/D

Type/Release Date: MEPD 4/14/2018

Eff: Date: 1/19/05 THRU MERD

TT: 25 Years To Life

BPT: IPCH 3/2017 Assignment/Action Taken: SHU PROGRAM / IN PERSON /
RETAIN CCI-SHU / ASSESS 45 DAYS FOC RVR DTD 8-12-05, LOG #IVB-05-08-
0491 ADJUST MERD 2-12-06 / REAFFIRM IEM YARD & DOUBLE CELL

Inmate HILL's case was reviewed by UCC in person this date for the purpose of **SHU PROGRAM Review**. Subject stated that he was in good health and was ready to proceed. No Staff Assistant was assigned, as the Subject is not illiterate and the issues are not complex. Subject was originally placed in ASU on 1/19/05 at CAL-IV for Battery on Inmate W/Weapon. Subject received a 15 month Expected SHU Term with a MERD of 12/27/05, based on CDC 115 dated 1/19/05, Log # 01-05-A-043, for the specific act of Battery on Inmate W/Weapon. WG/PG D2-D effective 1/19/05 through MERD per PC 2933.6 is appropriate based on this disciplinary. CSR action of 7/12/05 endorsed Subject for CCI-SHU placement. Subject was received at CCI-IVB SHU on 7/20/05 from CAL-IV ASU. It is noted that Subject has received two CDC 115's (RVR). The first RVR is dated 8/12/05, Log #IVB-05-08-0491, for the specific act of Disobeying a Direct Order, which Subject was found Guilty of this Offense. The second is dated 10/3/05, Log #4BSH-05-10-0556, for the specific act of Disobeying a Direct Order-Refusing a Cellmate, which is still pending adjudication.

COMMITTEE DECISION: Based on a review of all Case Factors, UCC elects to assess 45 Days Forfeiture of Good Conduct Credits (FOC) for RVR dated 8/12/05, Log #IVB-05-08-0491, for the specific act of Disobeying a Direct Order with an adjusted MERD of 2/12/06. UCC also acts to retain Subject CCI-SHU pending completion of MERD. Exercise yard categories were discussed and explained with the Subject. Committee acts to reaffirm the Subject on the Individual Exercise Module (IEM) Exercise Yard based on Inmate's request and Committee review of the Central File. Committee reviewed Subject's Central File to determine housing assignment. Subject meets the criteria for Double Cell Status based on no in-cell misconduct or predatory behavior. UCC noted that SHU Offense occurred in Dayroom; however, Victim was Subject's Cellmate. Subject has been double celled successfully since this offense. CDC 1882 is in Central File and was reviewed this date by UCC. Subject is in agreement with both his yard and cell status. MAX Custody is appropriate. Subject actively participated in Committee discussion and decision stating that he agrees with committee's actions. Subject was advised of his appeal rights, as well as, behavioral expectations.

CASE FACTORS: Subject is a 34-year old, Black, New Commitment, 1st-Termer, received into CDC on 2/24/93 from Los Angeles County, for the Offense of Murder 1st & Attempted Murder 1st. GPL: GED. Reading level: GED. Subject was reviewed for DDP/DPP and does not meet the criteria. Medical status: Full Duty with Camp based on CDC 128C dated 3/2/93. Psych

* **Concerns:** Clear-GP per CDC 128C dated 6/3/05. Subject was reviewed for MDO consideration and does not meet the criteria. TB code is: 32 per CDC 128C dated 2/10/05. Escapes: Clear. Arson: Clear. Sex Related Offenses: Clear. HWDs: Clear. Past substance use: Marijuana & Alcohol. CDC 812/812C notes enemies: yes. *Gang Affiliation: None. *Moniker: Unknown.

* **Confidential information:** Clear. Registration required: None. Notification required: PC3058.6. Restitution ordered: None. Noted. Past disciplinary history consists of notable CDC-115s for: Conspiracy to Traffic Drugs-SHU (9/22/93), Refused to Submit Blood & Saliva Specimens (3/10/95 & 12/6/95), Refusing to Accept a Cellmate (8/21/99), Willfully Obstructing a Peace Officer (7/25/02), Battery on Inmate W/Weapon-SHU (1/19/05), & Disobeying a Direct Order (8/12/05). Subject is disqualified from Minimum Support Facility, Fire Camp, Community Correctional Facility, Substance Abuse Program, Restitution Center, or Community Correctional Re-entry Center Programs based on LIF/CLS/SHU. Next anticipated review date is 2/8/06 for PRE MERD. Subject is a Level IV 180 design Inmate based on A-1 criteria.

COMMITTEE:

E. Devlin
E. Devlin, CC-1

M. Bryant
M. Bryant, FC (A)
CHAIRPERSON

K. Valencia
K. Valencia, CC-II
RECORDER

Date: 11/30/05

ed

Classification: UCC / SHU PROGRAM REVIEW

Inst: CCI-IVB SHU

Received
12/2/2005

EXH 1B

EXH 1B A

EXH 1B

1-2

NAME and NUMBER

HILL H67149

CALIPATRIA

As per DIRECTOR'S RULE 3316(a), This is a written notification of a referral of conduct to the District Attorney's Office for Criminal prosecution.


On FEBRUARY 10, 2005, the Security and Investigations Unit received an incident report. Log # CAL-FA3-05-01-0037 stating that you were involved in a violation of a California Penal Code section (s) 4501. This matter has been referred to the Imperial County District Attorney's Office on OCTOBER 3, 2005, for prosecution consideration.

ORIGINAL: C-File

CC: Lt.

S & I

Inmate


OFFICER R. M. ALVAREZ
DISTRICT ATTORNEY LIAISON
Security & Investigations

10-03-05

REFERRAL

GENERAL CHRONO

received on 10.11.05

EXHIBIT

13

FILED

FEB 15 2007
JAN 29 2006

SUPERIOR COURT CA.
IMPERIAL COUNTY
JOSE O. GUILLEN CLERK
BY [Signature] DEPUTY

petitioner
received on
Feb. 21, 2007

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF IMPERIAL

In re:

BRIAN HILL,

On Habeas Corpus.

Case No. EHC 00826

**ORDER DENYING PETITION FOR WRIT OF
HABEAS CORPUS**

In a verified petition filed January 16, 2007, petitioner, currently incarcerated at Corcoran State Prison, alleges due process violations in a February 16, 2005 Calipatria S.P. disciplinary hearing where he was found guilty of battery on an inmate (his cell mate) with a broom handle. The reporting officer was an eyewitness to the incident in front of cell 212 seeing petitioner strike the victim on the head and torso on January 19, 2005.


Petitioner alleges that he was unable to present documentary evidence at the hearing of the matter: especially a medical document that the victim had no visible injuries other than an injury when he was inadvertently wounded in the leg by the reporting officer's weapon.

Petitioner has not exhausted his administrative remedies to the Director's level of review. Petitioner obtained his level 2 response on April 28, 2005 but his appeal was denied as untimely.

1 at the Director's level on August 2, 2005. Petitioner alleges that prison officials did not process
2 his appeal.

3 The petition is DENIED for failure to exhaust his administrative remedies and as untimely.
4 Even if petitioner had exhausted his administrative remedies, there is no explanation in the
5 petition as to why he has delayed some 16 months before filing a habeas petition in this court.

6 DATED: February 14, 2007

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8 JEFFREY B. JONES
9 Judge of the Superior Court
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FILED

FEB 15 2007
JAN 29 2006

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF IMPERIAL**

☐ 220 Main Street
Brawley, CA 92227

☐ 415 4th Street
Calexico, CA 92231

☒ 939 Main Street
El Centro, CA 92243
**SUPERIOR COURT CA.
IMPERIAL COUNTY
JOSE O. GUILLEN CLERK
BY _____ DEPUTY**

☐ PO Box 1087
2124 Winterhaven Drive
Winterhaven, CA 92243

☐ Jail Division
328 Applestill Road
El Centro, CA 92243

☐ Juvenile Division
324 Applestill Road
El Centro, CA 92243

Brian T. Hill
Plaintiff/Petitioner,

vs.

Larry E. Scribner
Defendant/Respondent.

Case No. EHC00826

DECLARATION OF MAILING

State of California, County of Imperial

I, the undersigned, certify under penalty of perjury, that I am a Deputy Clerk of the above entitled Court and not a party to the within action; that I mailed a true and correct copy of the order denying writ of habeas corpus to each of the persons listed below, by depositing such notice in the United States Mail, enclosed in sealed envelopes with postage prepaid:

BRIAN HILL, H-67149
CORCORAN STATE PRISON
PO BOX 5246
CORCORAN, CA 93212

Imperial County District Attorney-via interoffice mail
939 W Main St
El Centro, CA 92243

JOSE O. GUILLEN, COURT EXECUTIVE OFFICER

Dated: February 15, 2007

By: 
Deputy Clerk

EXHIBIT

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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re BRIAN HILL

on

Habeas Corpus.

D050518

(Imperial County
Super. Ct. No. EHC 00826)

FILED
Stephen M. Kelly, Clerk
JUN 14 2007
Court of Appeal Fourth District
Received
June 13th 2007

THE COURT:

The petition for writ of habeas corpus has been read and considered by Presiding Justice McConnell and Associate Justices McDonald and Irion.

In 2005, while he was housed at Calipatria State Prison, corrections officials issued petitioner Brian Hill a rules violation report for battering his cellmate with a weapon (a broom). Hill requested that Officer Gomez be present as a witness at the hearing on the matter. However, at the time of the hearing, Officer Gomez was on medical leave.

Prior to the hearing, an investigative employee interviewed Officer Gomez. The investigative employee asked Officer Gomez questions posed by Hill and recorded Officer Gomez's responses in a report. The questions and answers related to whether Hill had requested that Officer Gomez move him because he and his cellmate were not getting along. Officer Gomez acknowledged that Hill had requested a move, but he denied that Hill had told him the move was for interpersonal reasons.

At the hearing, the hearing officer informed Hill of Officer Gomez's medical leave and Hill orally agreed to accept the questions and answers reported in the investigative employee's report. Although Hill refused to sign a statement to this effect, his oral acceptance was witnessed by Officer Steele. The hearing officer proceeded with the hearing and, at the conclusion of it, found Hill guilty of the rules violation. As a result of the violation, Hill forfeited 360 days of conduct credit and 10 days of yard time. He was also referred to the Institutional Classification Committee with a recommendation that he be placed in the Security Housing Unit for an appropriate term.

Hill administratively appealed the hearing officer's decision through the Second Level, claiming that he was denied his right to call witnesses and present documentary evidence. Some unspecified time after the Second Level appeal was denied, Hill submitted an appeal to the Director's Level. The appeal was returned to him because it was untimely.

More than a year after Hill's Director's Level appeal was returned to him, Hill filed a petition for writ of habeas corpus with the Imperial County Superior Court. The superior court denied the petition because it was untimely and because Hill did not exhaust his administrative remedies.

Hill is now petitioning for habeas relief from this court. In his petition, he reiterates his substantive arguments. He also claims that his failure to exhaust his administrative remedies should be excused based on futility.

As the superior court did, we conclude that Hill's petition is procedurally barred because he did not exhaust his administrative remedies. (*In re Dexter* (1979) 25 Cal.3d 921, 925; *Wright v. State* (2004) 122 Cal.App.4th 659, 664-667.) The record clearly shows that Hill's administrative appeal was not reviewed through the Director's Level. Moreover, nothing in the record shows that the Director's Level appeal was, in fact, timely or was otherwise rejected for an improper reason. Accordingly, Hill has not established that he should be excused from exhausting his administrative remedies based on futility.

The petition is denied.



IRION, Acting P. J.

Copies to: All parties

EXHIBIT

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S156515

IN THE SUPREME COURT OF CALIFORNIA

En Banc

In re BRIAN T. HILL on Habeas Corpus

The petition for writ of habeas corpus is denied. (See *In re Dexter* (1979)
25 Cal.3d 921.)

received
Nov. 16th 2007
SUPREME COURT
FILED

NOV 14 2007

Frederick K. Ohlrich Clerk

Deputy

GEORGE

Chief Justice

EXHIBIT

16

**Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001**

William K. Suter
Clerk of the Court
(202) 479-3011

April 21, 2008

Received
4-24-08

Mr. Brian T. Hill
Prisoner ID H67149 C2-115
PO Box 5246
Corcoran, CA 93212

Re: Brian T. Hill
v. California
No. 07-9665

Dear Mr. Hill:

The Court today entered the following order in the above-entitled case:

The petition for a writ of certiorari is denied.

Sincerely,



William K. Suter, Clerk

JS44

(Rev. 07/89)

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I (a) PLAINTIFFS

Brian T. Hill

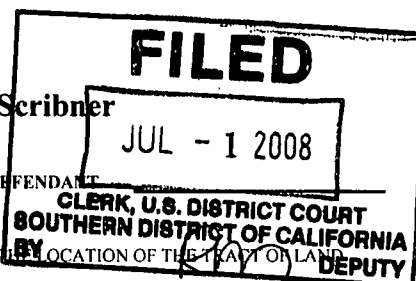
(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF **Kings**
(EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANTS

Larry E. Scribner

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE LOCATION OF THE TRACT OR LAND



(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Brian T. Hill
PO Box 5246
Corcoran, CA 93212
H-67149

ATTORNEYS (IF KNOWN)

08CV1180 JM (WMC)

II. BASIS OF JURISDICTION (PLACE AN X IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN X IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | | | |
|---|----------------------------|---|----------------------------|
| PT | DEF | PT | DEF |
| <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of This State | | Incorporated or Principal Place of Business in This State | |
| <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen of Another State | | Incorporated and Principal Place of Business in Another State | |
| <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |
| Citizen or Subject of a Foreign Country | | Foreign Nation | |

IV. CAUSE OF ACTION (CITE THE US CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY).

28 U.S.C. 2254

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veterans Benefits <input type="checkbox"/> 160 Stockholders Suits <input type="checkbox"/> Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury-Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 RR & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. <input type="checkbox"/> Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State <input type="checkbox"/> 890 Other Statutory Actions
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Tort to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input checked="" type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights			

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

- ☒ 1 Original Proceeding ☐ 2 Removal from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

Check YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☐ NO

VIII. RELATED CASE(S) IF ANY (See Instructions):

JUDGE

Docket Number

DATE 7/1/2008

SIGNATURE OF ATTORNEY OF RECORD

R. Miller